

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA,)	Docket No. 11 CR 119
)	
Plaintiff,)	
)	
vs.)	
)	
JASWINDER RAI CHHIBBER,)	Chicago, Illinois
)	March 1, 2012
Defendant.)	9:00 o'clock a.m.

TRIAL TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE SUZANNE B. CONLON, AND A JURY
VOLUME 1-A

APPEARANCES:

For the Plaintiff:	HON. PATRICK FITZGERALD United States Attorney BY: MR. SAMUEL B. COLE MR. JOEL M. HAMMERMAN 219 S. Dearborn St., Suite 500 Chicago, Illinois 60604
For the Defendant:	PUGH, JONES & JOHNSON, P.C. BY: MR. WALTER JONES, JR. MR. JONATHAN B. CIFONELLI 180 North LaSalle Street, Suite 3400 Chicago, IL 60601 (312) 768-7800 LAW OFFICE OF ROBERT ORMAN BY: MR. ROBERT ORMAN One North LaSalle Street, Suite 1775 Chicago, IL 60602 (312) 372-0515
Court Reporter:	MS. CAROLYN R. COX, CSR, RPR, CRR, FCRR Official Court Reporter 219 S. Dearborn Street, Suite 1854-B Chicago, Illinois 60604 (312) 435-5639

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1 (The following proceedings were had in open court in the
2 presence and hearing of the prospective jurors:)

09:15:32 3 THE COURT: Good morning. Thank you for helping us
09:15:34 4 in the trial of a case. We are here to select a jury for a
09:15:40 5 criminal case. I will tell you a bit about the case in a
09:15:44 6 moment.

09:15:46 7 I will also be asking you some questions this
09:15:52 8 morning. As I am sure you were told during orientation by the
09:15:54 9 chief judge, the role of a jury is especially sensitive in our
09:16:02 10 society. Juries are chosen on the basis of ability to be fair
09:16:10 11 and impartial to both sides. Jurors are at the very hub of
09:16:18 12 our judicial process. Jurors, not judges, make the decisions
09:16:22 13 about the facts of a case. Jurors, not judges, make the
09:16:28 14 decision about whether or not in a criminal case the
09:16:34 15 government has proven its case beyond a reasonable doubt as to
09:16:38 16 each charge.

09:16:40 17 So, as you can see, jurors play an essential role in
09:16:46 18 the American judicial system.

09:16:48 19 Now, in order to select the kind of fair and
09:16:52 20 impartial jury that can come to a case with an open mind and
09:16:58 21 without any agenda, I must ask you some questions. And if any
09:17:06 22 of my questions touch on personal matters you'd rather not
09:17:10 23 discuss in front of the entire group, just say that you'd like
09:17:16 24 a sidebar conference and we'll come up here literally to the
09:17:24 25 side of the bench and we can discuss whatever the matter is.

09:17:30 1 And on some occasions, I will suggest that you come up to
09:17:34 2 sidebar if you have a response to a question.

09:17:40 3 You will be under oath, so it's really important that
09:17:42 4 my questions be clear to you. If you can't hear me or you
09:17:48 5 find a question confusing, do not hesitate to bring that up or
09:17:54 6 ask me to repeat it.

09:17:56 7 The acoustics in this room are not the best. You
09:18:00 8 probably can hear the undertones of the air conditioning
09:18:06 9 system. So if you respond to a question, we would all
09:18:12 10 appreciate it if you would stand and try to project your voice
09:18:16 11 as I'm trying to project mine now.

09:18:20 12 And also would you first identify yourself. The
09:18:26 13 court reporter takes down everything that's said in court for
09:18:30 14 the record, so she has to be able to put a name with the
09:18:36 15 speaker. So if you are responding, please state your name
09:18:42 16 first, even if you respond to more than one question. I have
09:18:48 17 a reasonably good memory, and so does the court reporter, hers
09:18:54 18 is probably better, but we still can't remember everybody's
09:18:56 19 name the first day.

09:18:58 20 All right. I am going to ask that the clerk now
09:19:02 21 administer the oath to the prospective jurors. Would you
09:19:04 22 stand, please.

09:19:34 23 (Prospective jurors sworn.)

09:19:38 24 THE COURT: Let me tell you a bit about the case, and
09:19:44 25 the reason why I'm doing this, and I will also introduce the

09:19:50 1 people sitting at counsel tables, we need to know whether or
09:19:58 2 not you know anybody in this case, whether or not you know of
09:20:02 3 anybody in this case, or whether you or anyone close to you,
09:20:10 4 regardless of relationship, blood, friend, someone that is
09:20:16 5 important to you, has had any life experiences similar to the
09:20:22 6 ones that will be involved in this case. When in doubt, just
09:20:30 7 bring it to my attention.

09:20:32 8 All right. Thank you.

09:20:34 9 This is a criminal case. The defendant is Jaswinder,
09:20:40 10 the first name is spelled J-a-s-w-i-n-d-e-r, Chhibber,
09:20:48 11 C-h-h-i-b-b-e-r. Dr. Chhibber is a medical doctor who
09:20:56 12 operated a clinic called Cottage Grove Community Medical
09:21:02 13 Center located at 642 East 79th Street in Chicago. He is
09:21:10 14 charged with eight counts of healthcare fraud and eight counts
09:21:14 15 of making materially false statements in connection with the
09:21:22 16 delivery of and payment for healthcare services.

09:21:24 17 Dr. Chhibber has pleaded not guilty to all charges.
09:21:28 18 He is presumed to be innocent. It is the government's burden
09:21:34 19 to prove beyond a reasonable doubt that Dr. Chhibber is guilty
09:21:38 20 of each charge.

09:21:40 21 The trial is expected to take approximately one week.

09:21:50 22 Now, do you know anything about this case or have you
09:21:52 23 or anyone close to you had a life experience or a work
09:21:58 24 experience that may be related to the nature of this case? If
09:22:04 25 so, please raise your hand.

09:22:06 1 All right. This is the kind of question I'd like to
09:22:10 2 address at sidebar, so we will have a sidebar right off the
09:22:14 3 bat. Would you step forward, please.

09:22:14 4 (Whereupon, the following discussion was had at the bench
09:22:50 5 outside the hearing of the prospective jurors:)

09:22:50 6 THE COURT: Good morning.

09:22:54 7 PROSPECTIVE JUROR STERLING: I am an executive with a
09:22:56 8 hospital here -- Matthew Sterling -- Elmhurst Memorial
09:22:58 9 Hospital. I am an executive here. Elmhurst Hospital. I am
09:23:02 10 in the I.T. group, but I am, you know.

09:23:06 11 THE COURT: Interacting with doctors --

09:23:08 12 PROSPECTIVE JUROR STERLING: Absolutely.

09:23:08 13 THE COURT: -- and the medical field.

09:23:10 14 PROSPECTIVE JUROR STERLING: Absolutely.

09:23:12 15 THE COURT: I will excuse you from the case. I thank
09:23:14 16 you for coming in. Just go back to the jury room.

09:23:18 17 PROSPECTIVE JUROR STERLING: Thank you.

09:23:18 18 MR. JONES: Thank you, your Honor.

09:23:18 19 (The following proceedings were had in open court in the
09:23:38 20 presence and hearing of the prospective jurors:)

09:23:38 21 THE COURT: Is there anybody else -- I should have
09:23:40 22 asked. Anybody else?

09:23:46 23 All right. Let me introduce the people sitting at
09:23:50 24 the tables in the front of the courtroom.

09:23:56 25 We have Assistant U.S. Attorneys Joel M. Hammerman,

09:24:04 1 H-a-m-m-e-r-m-a-n, Samuel B. Cole, C-o-l-e, and would you
09:24:14 2 introduce the other persons sitting at the government's table,
09:24:18 3 please?

09:24:18 4 MR. HAMMERMAN: Yes, your Honor. With us is Special
09:24:22 5 Agent Ashley Roelofs from the FBI and Special Agent Ed Leitelt
09:24:30 6 from the Department of Health and Human Services.

09:24:32 7 THE COURT: Thank you.

09:24:32 8 Do any of you know Mr. Hammerman, Mr. Cole, Special
09:24:38 9 Agent Roelofs from the FBI, or Special Agent Leitelt from the
09:24:44 10 Department of Health and Human Services?

09:24:48 11 Thank you.

09:24:50 12 Whenever I say "do you know," I also mean in the
09:24:54 13 context are they known to you for any reason, through friends
09:25:00 14 or family.

09:25:02 15 The United States attorney for this district is
09:25:08 16 Patrick Fitzgerald. Do any of you know Mr. Fitzgerald?

09:25:18 17 Have any of you ever been employed by the United
09:25:22 18 States Department of Justice or any United States Attorney's
09:25:28 19 Office or have any of your friends or relatives been employed
09:25:36 20 by either the -- any U.S. Attorney's Office or the Department
09:25:44 21 of Justice?

09:25:44 22 Yes. Would you stand and give us your name, please.

09:25:46 23 PROSPECTIVE JUROR PFISTER: Jim Pfister. I had a
09:25:50 24 friend five years ago who worked for the Pennsylvania DA.

09:25:58 25 THE COURT: A district attorney?

09:26:00 1 PROSPECTIVE JUROR PFISTER: Right.

09:26:02 2 THE COURT: And without going into details, did your
09:26:06 3 friend work on criminal or civil cases, or do you know?

09:26:14 4 PROSPECTIVE JUROR PFISTER: I think criminal.

09:26:14 5 THE COURT: And did your friend discuss his
09:26:18 6 experiences with you?

09:26:20 7 PROSPECTIVE JUROR PFISTER: Not in detail.

09:26:24 8 THE COURT: Without going into detail, is there any
09:26:26 9 impressions that you were given that might give you a point of
09:26:32 10 view about the trial of a criminal case?

09:26:36 11 PROSPECTIVE JUROR PFISTER: Nothing that I haven't
09:26:40 12 seen on TV.

09:26:40 13 THE COURT: All right. All right. Thank you. We
09:26:46 14 will get into that soon.

09:26:48 15 In the back, yes. Would you stand and give us your
09:26:50 16 name.

09:26:50 17 PROSPECTIVE JUROR MARTINAK: Roberta Martinak. My
09:26:52 18 brother-in-law was a state's attorney for Harris County. He
09:26:56 19 has been deceased now for 12 years.

09:26:58 20 THE COURT: Is there anything about your
09:27:00 21 brother-in-law's -- your late brother-in-law's employment that
09:27:02 22 might give you a point of view, without going into details at
09:27:06 23 this point?

09:27:06 24 PROSPECTIVE JUROR MARTINAK: No, I don't believe so,
09:27:08 25 because he was in Southern Illinois and I have always been

09:27:10 1 here in Chicago.

09:27:10 2 THE COURT: So you didn't communicate with him about
09:27:12 3 his work?

09:27:14 4 PROSPECTIVE JUROR MARTINAK: No, ma'am.

09:27:14 5 THE COURT: All right. Thank you.

09:27:22 6 PROSPECTIVE JUROR WESCOTT: Stacey Wescott. My
09:27:24 7 father-in-law is a special agent.

09:27:24 8 THE COURT: Who is --

09:27:26 9 PROSPECTIVE JUROR WESCOTT: Homeland Security. I
09:27:28 10 don't know if that pertains.

09:27:34 11 THE COURT: Your brother-in-law is a special agent
09:27:36 12 with whom?

09:27:36 13 PROSPECTIVE JUROR WESCOTT: Homeland Security.

09:27:38 14 THE COURT: Homeland Security. And has he discussed
09:27:40 15 his work with you?

09:27:42 16 PROSPECTIVE JUROR WESCOTT: Yes. Not a specific
09:27:46 17 nature.

09:27:46 18 THE COURT: Yes. And what is the general nature of
09:27:50 19 his responsibilities?

09:27:50 20 PROSPECTIVE JUROR WESCOTT: He tracks online sexual
09:27:54 21 predators.

09:27:54 22 THE COURT: I see. Is there anything about his work,
09:27:58 23 without going into detail, that you think might affect your
09:28:02 24 attitude toward the criminal justice system? Yes or no?
09:28:10 25 That's closer yes or no? Or maybe. Is it maybe?

09:28:14 1 PROSPECTIVE JUROR WESCOTT: It's hard to say.

09:28:16 2 THE COURT: All right. You are excused. You are
09:28:20 3 conflicted about it. You are excused.

09:28:24 4 Anybody else?

09:28:26 5 All right. There are two people, one closer to me.

09:28:30 6 Yes, would you stand, sir, and give us your name.

09:28:32 7 PROSPECTIVE JUROR OTTLEY: My name is Bruce Ottley.

09:28:34 8 Can I request a sidebar?

09:28:36 9 THE COURT: Yes.

09:28:36 10 (Whereupon, the following further proceedings were had at
09:28:50 11 sidebar outside the hearing of the prospective jurors:)

09:28:50 12 THE COURT: Mr. Ottley.

09:28:52 13 PROSPECTIVE JUROR OTTLEY: My name is Bruce Ottley.

09:28:54 14 I am a professor with DePaul law school, and I have taught
09:28:56 15 criminal law for many years, wrote books on the prosecution.

09:29:02 16 I have written recently a number of articles on the
09:29:04 17 admissibility of -- admissibility in criminal cases. So I am
09:29:06 18 not -- you know, you need to know that.

09:29:08 19 THE COURT: Yes, I think so. Yes. We have an
09:29:14 20 authority in the courtroom. It would probably be interesting
09:29:16 21 for you to participate in the trial, but I have some concerns.

09:29:20 22 PROSPECTIVE JUROR OTTLEY: My books involve from the
09:29:22 23 prosecution's point of view, so I am not sure how you would
09:29:24 24 react to that.

09:29:26 25 THE COURT: I am not sure how the defense attorney

09:29:28 1 would react to that.

09:29:30 2 MR. JONES: I think he knows, Judge.

09:29:32 3 THE COURT: All right. I am going to thank you and
09:29:34 4 excuse you. I really appreciate your coming in today. I know
09:29:40 5 how busy you are.

09:29:40 6 PROSPECTIVE JUROR OTTLEY: Thank you.

09:29:40 7 (The following proceedings were had in open court in the
09:29:42 8 presence and hearing of the prospective jurors:)

09:29:42 9 THE COURT: There was another hand back. Would you
09:29:44 10 step up here, please.

09:29:44 11 (Whereupon, the following discussion was had at the bench
09:29:44 12 outside the hearing of the prospective jurors:)

09:29:56 13 THE COURT: Good morning.

09:29:56 14 PROSPECTIVE JUROR BOBK0: My name is Janine Bobko,
09:29:58 15 and I was just going to say that my father-in-law has been
09:30:02 16 formerly employed by the State's Attorney's Office in Cook
09:30:06 17 County.

09:30:06 18 THE COURT: Is he in criminal or civil work?

09:30:06 19 PROSPECTIVE JUROR BOBK0: He was in investigative
09:30:10 20 work, so I'm not sure. Both or either.

09:30:12 21 THE COURT: Well, given the relationship, I will
09:30:14 22 excuse you.

09:30:16 23 PROSPECTIVE JUROR BOBK0: Thank you.

09:30:16 24 THE COURT: Would you go back to the jury room now.
09:30:18 25 They might have some other work for you.

09:30:24 1 PROSPECTIVE JUROR BOBK0: Absolutely.

09:30:24 2 MR. JONES: Judge, how many challenges, are we six
09:30:28 3 and 10?

09:30:28 4 THE COURT: Yes. Yes.

09:30:50 5 (The following proceedings were had in open court in the
09:31:18 6 presence and hearing of the jury:)

09:31:18 7 THE COURT: Is there anybody else who is related to
09:31:20 8 someone who might have a role in the investigation or
09:31:22 9 prosecution of the case?

09:31:26 10 Now, the second table. Representing Dr. Chhibber are
09:31:34 11 Walter Jones, Jr., of the law firm Pugh, Jones & Johnson,
09:31:42 12 which is located at 180 North LaSalle Street in Chicago, and
09:31:48 13 John Cifonelli, that's C-i-f-o-n-e-l-l-i.

09:31:58 14 Do any of you know either of Dr. Chhibber's lawyers,
09:32:06 15 Mr. Jones or Mr. Cifonelli, or know of them?

09:32:14 16 Mr. Jones, would you introduce your client, please.

09:32:20 17 MR. JONES: Yes, your Honor. This is Dr. Chhibber.
09:32:22 18 And this is -- standing next to Dr. Chhibber is attorney
09:32:30 19 Robert Orman.

09:32:32 20 THE COURT: Do any of you know Dr. Chhibber or know
09:32:38 21 of Dr. Chhibber or Mr. Orman?

09:32:50 22 Thank you.

09:32:50 23 Have you or anyone close to you been employed by or
09:32:54 24 been a patient at the Cottage Grove Community Medical Clinic?

09:33:02 25 Have you or anyone close to you worked for or as a

09:33:08 1 healthcare provider; in other words, are there any doctors,
09:33:12 2 nurses, technicians, physician's assistant, medical lab
09:33:20 3 people?

09:33:20 4 Okay. We have a number. All right. We will start
09:33:26 5 my right, your left. Second row, there was a hand. Would you
09:33:32 6 stand and give us your name.

09:33:32 7 PROSPECTIVE JUROR SHERIDAN: My name is Brian
09:33:34 8 Sheridan. My sister-in-law's father is a doctor, and I worked
09:33:38 9 in his office and met with some insurance for about a year.
09:33:42 10 That's my extent, but I don't have anything specifically
09:33:44 11 related to the medical field that I am qualified for.

09:33:48 12 THE COURT: What office was that?

09:33:48 13 PROSPECTIVE JUROR SHERIDAN: He is a nephrology and
09:33:54 14 hypertension specialist in Park Ridge.

09:33:58 15 THE COURT: Thank you.

09:33:58 16 Yes. Over next to the wall.

09:34:00 17 PROSPECTIVE JUROR MUNTNER: My name is Dan Muntner.

09:34:04 18 I have a daughter who is an operating room nurse at Kishwaukee
09:34:10 19 Hospital in Sycamore.

09:34:10 20 THE COURT: Thank you.

09:34:10 21 Yes, sir.

09:34:10 22 PROSPECTIVE JUROR AGUILAR: Good morning, your Honor.
09:34:12 23 Mark Aguilar. I am a pharmacy technician for a home infusion
09:34:16 24 company based in Elmhurst, Illinois.

09:34:18 25 THE COURT: Thank you.

09:34:20 1 Yes. A couple hands back there. Yes.

09:34:22 2 PROSPECTIVE JUROR MANALO: I am Christine Manalo. My
09:34:26 3 sister-in-law is a nurse. My aunt is a nurse as well.

09:34:30 4 THE COURT: Where are each of the nurses?

09:34:32 5 PROSPECTIVE JUROR MANALO: One of them is Sherman
09:34:38 6 Hospital in Elgin, and Cook County -- John Stroger Cook County
09:34:42 7 Hospital.

09:34:44 8 THE COURT: And in what department at Stroger?

09:34:48 9 PROSPECTIVE JUROR MANALO: The emergency pediatric
09:34:50 10 emergency department.

09:34:50 11 THE COURT: I see. Thank you.

09:34:54 12 Another hand in the back, yes.

09:34:54 13 PROSPECTIVE JUROR TEDORE: My name is Diane Tedore,
09:34:56 14 and my brother-in-law is a doctor in Kane County.

09:35:00 15 THE COURT: What kind of practice does he have?

09:35:02 16 PROSPECTIVE JUROR TEDORE: Family practice.

09:35:04 17 THE COURT: I see. Thank you.

09:35:06 18 Yes.

09:35:06 19 PROSPECTIVE JUROR WILLERT: Nathan Willert. My
09:35:10 20 mother is a surgical technician at Northwestern.

09:35:12 21 THE COURT: Thank you.

09:35:14 22 Yes.

09:35:14 23 PROSPECTIVE JUROR ENKE: Scott Enke. My uncle is a
09:35:20 24 technician at Evanston Hospital, and I work for a medical
09:35:20 25 practitioner.

09:35:20 1 THE COURT: All right. Your uncle is a physician at
09:35:26 2 what hospital?

09:35:26 3 PROSPECTIVE JUROR ENKE: He is a vascular surgeon at
09:35:28 4 Evanston Hospital.

09:35:28 5 THE COURT: And who is your employer?

09:35:30 6 PROSPECTIVE JUROR ENKE: Covidien, a medical device
09:35:34 7 company.

09:35:36 8 THE COURT: I see. Thank you.

09:35:38 9 Yes, anybody else on this side of the courtroom?

09:35:40 10 Yes.

09:35:40 11 PROSPECTIVE JUROR: My sister is a nurse, my
09:35:42 12 sister-in-law is a nurse, my mom used to work --

09:35:46 13 THE COURT: Let's take them one at a time. First
09:35:52 14 your mom, where --

09:35:56 15 PROSPECTIVE JUROR: My mom was an office manager at a
09:36:00 16 medical office.

09:36:00 17 THE COURT: Which medical office?

09:36:00 18 PROSPECTIVE JUROR: In Joliet.

09:36:02 19 Then my sister is a nurse, and she just changed jobs.
09:36:04 20 She gives meds to -- I don't know how to put it -- people that
09:36:10 21 are not stable.

09:36:12 22 And then my sister-in-law is a nurse at Evanston
09:36:16 23 Hospital.

09:36:18 24 THE COURT: Yes. Is it your sister who changed
09:36:24 25 employers?

09:36:26 1 PROSPECTIVE JUROR: Just recently.

09:36:26 2 THE COURT: Who was her old employer?

09:36:28 3 PROSPECTIVE JUROR: Ottawa Hospital.

09:36:32 4 THE COURT: Ottawa Hospital?

09:36:34 5 And who is her new employer?

09:36:36 6 PROSPECTIVE JUROR: I don't know the name of it.

09:36:38 7 THE COURT: Do you know where her new employer is

09:36:40 8 located?

09:36:40 9 PROSPECTIVE JUROR: I do not.

09:36:40 10 THE COURT: Okay. All right. Thank you.

09:36:42 11 Anybody else in your family?

09:36:46 12 PROSPECTIVE JUROR: No. That's it.

09:36:46 13 THE COURT: Anybody else on the left side of the

09:36:48 14 courtroom?

09:36:50 15 All right. We will move to the other side now. Yes.

09:36:56 16 PROSPECTIVE JUROR MARTINAK: Roberta Martinak. My

09:36:58 17 sister is an emergency room nurse at Sarah Bush in Mattoon; I

09:37:06 18 have been in the laboratory profession for 35 years; and I am

09:37:10 19 an instructor at Joliet Junior College in phlebotomy.

09:37:14 20 THE COURT: And what do you teach?

09:37:16 21 PROSPECTIVE JUROR MARTINAK: Phlebotomy.

09:37:18 22 THE COURT: Thank you.

09:37:22 23 All right. There are more hands over there. Yes.

09:37:24 24 PROSPECTIVE JUROR FLEMING: Elizabeth Fleming. My

09:37:26 25 brother is a doctor.

09:37:28 1 THE COURT: Okay. Your brother is a doctor?

09:37:30 2 PROSPECTIVE JUROR FLEMING: In Minnesota.

09:37:32 3 THE COURT: All right. What is his specialty?

09:37:32 4 PROSPECTIVE JUROR FLEMING: Geriatrics, internal

09:37:38 5 medicine.

09:37:38 6 And my sister is a nurse in Omaha, Nebraska.

09:37:46 7 THE COURT: All right. Thank you.

09:37:50 8 Back in the corner.

09:37:50 9 PROSPECTIVE JUROR ROCKEY: Lorrie Rockey. And my mom

09:37:54 10 is a nurse at Lake Forest Hospital. And my husband's aunt is

09:38:06 11 a dentist. She has an office in Skokie.

09:38:12 12 THE COURT: Thank you.

09:38:14 13 Yes.

09:38:14 14 PROSPECTIVE JUROR: I have two registered nurse

09:38:20 15 sisters. One works -- she used to be in San Francisco, and

09:38:24 16 the other one works at North Avenue for Seniors. And I work

09:38:30 17 at the healthcare. I am a nurse back home in the Philippines,

09:38:34 18 but I work as quality assurance at Medline Home Health Care.

09:38:40 19 THE COURT: Thank you.

09:38:42 20 Yes.

09:38:42 21 PROSPECTIVE JUROR HOLMES: My sister-in-law is a

09:38:44 22 nurse --

09:38:44 23 THE COURT: Your name.

09:38:46 24 PROSPECTIVE JUROR HOLMES: I'm sorry. My name is

09:38:46 25 Sharon Holmes. My sister-in-law is a nurse at Trinity

09:38:50 1 Hospital in Chicago.

09:38:50 2 THE COURT: Thank you.

09:38:52 3 PROSPECTIVE JUROR HACKETT: My name is Natalie
09:38:56 4 Hackett. I am a physical therapist at Loyola University
09:38:58 5 Medical Center in Maywood.

09:39:00 6 THE COURT: Thank you.

09:39:02 7 Yes, in the the back.

09:39:02 8 PROSPECTIVE JUROR MAYEDA: Chris Mayeda. My father
09:39:04 9 is internal medicine, retired out of Denver. My mother was a
09:39:12 10 toxicology nurse, retired also. Godfather, ear, nose, and
09:39:18 11 throat specialist, Pennsylvania. And another ear, nose, and
09:39:22 12 throat specialist in New York. That's it.

09:39:24 13 THE COURT: Thank you.

09:39:24 14 Anybody else with a medical connection?

09:39:32 15 I missed somebody? Yes.

09:39:34 16 PROSPECTIVE JUROR TILLIS: My name is Edie Tillis.
09:39:38 17 My sister was a nurse at West Suburban. She recently changed,
09:39:42 18 and I am not sure which hospital she is at now. And I do
09:39:46 19 volunteer work at pediatrics at Mount Sinai Hospital.

09:39:52 20 THE COURT: Mount Sinai? All right. Thank you.

09:39:56 21 Anybody else?

09:40:02 22 Have you or anyone close to you ever been -- ever
09:40:06 23 applied for a job with a law enforcement agency, either
09:40:14 24 federal, state, or local?

09:40:18 25 Yes. Would you stand again.

09:40:20 1 PROSPECTIVE JUROR MARTINAK: Roberta Martinak. My
09:40:24 2 son is a DuPage Sheriff police officer. My daughter-in-law is
09:40:28 3 a Naperville police officer.

09:40:30 4 THE COURT: Thank you.

09:40:30 5 Over here. Yes.

09:40:34 6 PROSPECTIVE JUROR BANKS: Derrick Banks. My nephew
09:40:36 7 is a police officer with Chicago, CPD.

09:40:42 8 THE COURT: Thank you.

09:40:42 9 Yes.

09:40:42 10 PROSPECTIVE JUROR ANDRACKI: Joseph Andracki. My
09:40:46 11 aunt is retired from County Sheriff's police, and her husband
09:40:50 12 is also Cook County Sheriff's police.

09:40:52 13 THE COURT: Thank you.

09:40:54 14 Yes.

09:40:54 15 PROSPECTIVE JUROR BLECK: Laura Bleck. My dad used
09:40:58 16 to work the 911 system for Kane County, and I know several
09:41:04 17 police officers in Geneva.

09:41:06 18 THE COURT: Thank you.

09:41:08 19 More over here. Yes.

09:41:10 20 PROSPECTIVE JUROR LASHLEY: Althea Lashley. I worked
09:41:12 21 for the Chicago Police Department about 10 years ago,
09:41:18 22 administrative assistant.

09:41:18 23 THE COURT: All right. Thank you.

09:41:22 24 Yes.

09:41:22 25 PROSPECTIVE JUROR TILLIS: Edie Tillis. I have two

09:41:24 1 nephews that are Chicago police officers, and have a niece
09:41:30 2 also with Chicago, private investigations.

09:41:36 3 THE COURT: Where are they police officers?

09:41:38 4 PROSPECTIVE JUROR TILLIS: Chicago.

09:41:38 5 THE COURT: Chicago Police Department?

09:41:40 6 PROSPECTIVE JUROR TILLIS: Right.

09:41:40 7 THE COURT: Thank you.

09:41:42 8 Anybody else with a law enforcement connection?

09:41:48 9 Thank you.

09:41:48 10 Do any of you have legal training or experience as
09:41:56 11 lawyers, paralegals, in that field?

09:42:02 12 Yes, sir.

09:42:04 13 PROSPECTIVE JUROR KIRBY: Robert Kirby. I have been
09:42:06 14 an attorney for 32 years.

09:42:06 15 THE COURT: What kind of practice do you have?

09:42:08 16 PROSPECTIVE JUROR KIRBY: Corporate, securities,
09:42:10 17 commercial finance.

09:42:12 18 THE COURT: Thank you.

09:42:14 19 Anybody else in the very back?

09:42:18 20 PROSPECTIVE JUROR FLEMING: Elizabeth Fleming. I
09:42:26 21 used to work for a legal assistant for a workers' compensation
09:42:26 22 firm.

09:42:26 23 THE COURT: A legal assistant for a workers'
09:42:30 24 compensation firm? What is the name of the firm?

09:42:32 25 PROSPECTIVE JUROR: Corti, Aleksy & Castaneda.

09:42:38 1 THE COURT: Thank you.

09:42:46 2 Do any of you have relatives or close friends who
09:42:52 3 practice criminal law either as a prosecutor or as a defense
09:42:58 4 attorney?

09:43:02 5 Yes.

09:43:02 6 PROSPECTIVE JUROR BANKS: Derrick Banks. My boss
09:43:06 7 practices criminal -- he is a criminal attorney.

09:43:12 8 THE COURT: And who is that?

09:43:14 9 PROSPECTIVE JUROR BANKS: His name is John Wyatt.

09:43:16 10 THE COURT: And does he do mostly state work or
09:43:18 11 federal work or both?

09:43:20 12 PROSPECTIVE JUROR BANKS: I'm not sure, your Honor.

09:43:22 13 THE COURT: You don't know -- and what is your
09:43:24 14 position?

09:43:24 15 PROSPECTIVE JUROR BANKS: I am a building engineer.

09:43:26 16 THE COURT: I see. Thank you.

09:43:32 17 Yes, over here by the aisle.

09:43:34 18 PROSPECTIVE JUROR PFISTER: James Pfister. I have a
09:43:38 19 cousin, second cousin, that's an attorney in New Jersey. I
09:43:42 20 have no idea what his practice is.

09:43:44 21 THE COURT: Thank you.

09:43:46 22 I saw some other hands over on the left side.

09:43:48 23 PROSPECTIVE JUROR MUNTNER: Dan Muntner. I have a
09:43:50 24 cousin who is a defense attorney in Oak Lawn, criminal
09:43:54 25 defense.

09:43:54 1 THE COURT: Does he discuss his work with you?

09:43:58 2 PROSPECTIVE JUROR MUNTNER: He has from time to time
09:44:02 3 discussed cases with me. Pretty generic terms.

09:44:06 4 THE COURT: All right. Thank you.

09:44:12 5 Yes.

09:44:12 6 PROSPECTIVE JUROR KIRBY: In my job, I'm acquainted
09:44:14 7 with quite a few attorneys. Many of them do criminal.

09:44:20 8 THE COURT: Thank you.

09:44:24 9 Anybody else?

09:44:32 10 Some of the witnesses will be agents of the Federal
09:44:44 11 Bureau of Investigation. Would you have difficulty judging
09:44:46 12 the credibility of an FBI agent using the same standards you
09:44:50 13 would use to judge the credibility of any other witness?

09:44:54 14 In other words, what I am asking, would you have a
09:45:02 15 point of view that would affect your decision about the
09:45:06 16 believability of an FBI agent simply because the person was an
09:45:12 17 FBI agent, give that person more or less credibility simply
09:45:16 18 because of their job? Would any of you think you might have a
09:45:22 19 problem with that?

09:45:32 20 I will see you at sidebar.

09:45:32 21 (Whereupon, the following discussion was had at the bench
09:45:52 22 outside the hearing of the prospective jurors:)

09:45:52 23 THE COURT: Your name, please.

09:45:54 24 PROSPECTIVE JUROR TILLIS: Edie Tillis.

09:45:56 25 THE COURT: Yes, Ms. Tillis.

09:45:58 1 PROSPECTIVE JUROR TILLIS: I think that I might have
09:46:00 2 a problem with it because my brother, they did some
09:46:06 3 investigating on my brother, and he got sent away to prison
09:46:08 4 because of -- sorry.

09:46:12 5 THE COURT: I'm sorry.

09:46:14 6 PROSPECTIVE JUROR TILLIS: What happened, a
09:46:16 7 gangbanger tried to solicit him to join a gang, but he had a
09:46:22 8 gun, the guy got killed, and they had all this investigations
09:46:28 9 done, but they found -- even though my brother was in school,
09:46:32 10 the gangbanger didn't, always in trouble, they wind up sending
09:46:36 11 my brother to prison for it.

09:46:38 12 THE COURT: I'm sorry. I know that upsets you.

09:46:42 13 PROSPECTIVE JUROR TILLIS: Sorry about that.

09:46:44 14 THE COURT: I am sorry that you had to remember, this
09:46:46 15 triggered all that memory for you, but I think it would
09:46:50 16 probably be difficult for you under the circumstances to sit
09:46:54 17 as a juror in a case.

09:46:54 18 PROSPECTIVE JUROR TILLIS: I'm sorry.

09:46:56 19 THE COURT: Well, I will excuse you, and I'm sorry
09:47:00 20 that we brought all this mind. I will excuse you. Would you
09:47:04 21 go back to the jury room, please.

09:47:14 22 We will stay over here for the next question.

09:47:14 23 (Whereupon, the following proceedings were had in open court
09:47:14 24 in the presence and hearing of the prospective jurors:)

09:47:18 25 THE COURT: Ladies and gentlemen, I am going to ask a

09:47:20 1 question that will -- I will talk to you individually if you
09:47:28 2 have a response.

09:47:30 3 Have you ever been either the victim of a crime or
09:47:38 4 have you ever been charged, arrested, or prosecuted for a
09:47:44 5 crime other than a minor traffic violation? If so, I'd like
09:47:50 6 to see you at sidebar.

09:47:52 7 Yes. Would you step over here, please.

09:47:52 8 (Whereupon, the following discussion was had at the bench,
09:47:52 9 outside the hearing of the prospective jurors:)

09:48:06 10 THE COURT: Good morning.

09:48:06 11 PROSPECTIVE JUROR ANDRACKI: Good morning. Joseph
09:48:10 12 Andracki. I was charged with a felony DUI.

09:48:12 13 THE COURT: Just a moment, please.

09:48:18 14 Yes, I'm sorry.

09:48:20 15 PROSPECTIVE JUROR ANDRACKI: I was charged with a
09:48:22 16 felony DUI.

09:48:22 17 THE COURT: I see. When was that?

09:48:24 18 PROSPECTIVE JUROR ANDRACKI: Five years ago. About
09:48:30 19 five years ago.

09:48:32 20 THE COURT: And what was the result?

09:48:34 21 PROSPECTIVE JUROR ANDRACKI: Probation.

09:48:36 22 THE COURT: I see. Do you have some feelings about
09:48:38 23 the criminal justice system --

09:48:42 24 PROSPECTIVE JUROR ANDRACKI: Slightly.

09:48:42 25 THE COURT: All right. Well, I will excuse you and

09:48:46 1 ask you to return to the jury room.

09:48:48 2 PROSPECTIVE JUROR ANDRACKI: Thank you.

09:48:50 3 THE COURT: Could you step over here, please. Good
09:48:54 4 morning.

09:48:54 5 PROSPECTIVE JUROR MAYEDA: Good morning. Chris
09:48:56 6 Mayeda. My charge was back in March, a battery charge,
09:49:02 7 misdemeanor battery, destruction of property, involving a
09:49:06 8 peace officer was the person that was assaulted.

09:49:10 9 THE COURT: What happened with -- what was the final
09:49:14 10 decision in the case?

09:49:16 11 PROSPECTIVE JUROR MAYEDA: First-time offense, so
09:49:18 12 they gave me supervision.

09:49:18 13 THE COURT: I see. By the way, what police
09:49:22 14 department was involved?

09:49:22 15 PROSPECTIVE JUROR MAYEDA: That was Cook County.

09:49:24 16 THE COURT: Cook County Sheriff?

09:49:26 17 PROSPECTIVE JUROR MAYEDA: The person that was
09:49:28 18 assaulted was a sheriff, yes, and the police department that
09:49:30 19 arrested me was the Chicago PD.

09:49:32 20 THE COURT: I see. You have some feelings about the
09:49:34 21 criminal justice system?

09:49:36 22 PROSPECTIVE JUROR MAYEDA: It's still pretty soon.
09:49:38 23 This was just in March.

09:49:40 24 THE COURT: All right. I'm sorry. We will excuse
09:49:42 25 you from this case. Would you report back to the jury room?

09:49:46 1 PROSPECTIVE JUROR MAYEDA: Sure.

09:49:48 2 THE COURT: Another judge might need you in another
09:49:50 3 type of case.

09:49:56 4 Good morning.

09:49:56 5 PROSPECTIVE JUROR JANUS: Good morning. Rhonda
09:49:58 6 Janus. Our house was broken into twice.

09:50:00 7 THE COURT: How recently was that?

09:50:02 8 PROSPECTIVE JUROR JANUS: The most recent one was
09:50:04 9 about five years ago.

09:50:06 10 THE COURT: I see. And what community?

09:50:08 11 PROSPECTIVE JUROR JANUS: Zion.

09:50:14 12 THE COURT: Do you have any views about the police --

09:50:16 13 PROSPECTIVE JUROR JANUS: No.

09:50:16 14 THE COURT: -- one way or the other?

09:50:18 15 PROSPECTIVE JUROR JANUS: We have a wonderful --

09:50:20 16 THE COURT: Do you think you would be inclined to be
09:50:24 17 more sympathetic with one side or the other?

09:50:28 18 PROSPECTIVE JUROR JANUS: No.

09:50:28 19 THE COURT: Thank you. You can be seated.

09:50:36 20 Good morning again.

09:50:36 21 PROSPECTIVE JUROR BANKS: Derrick Banks. Two and a
09:50:38 22 half years ago, I had a domestic charge put against me. My
09:50:42 23 girlfriend and I, we still live together today, it was more so
09:50:48 24 once the charges were made, we had to go through with it.

09:50:50 25 THE COURT: What was the result of the charge?

09:50:52 1 PROSPECTIVE JUROR BANKS: We were arguing and she
09:50:54 2 called. It was based on that. So the next morning when I
09:51:00 3 appeared before the judge, you have to bail out, I chose
09:51:08 4 guilty because I did grab her. I did a year and a half
09:51:12 5 probation, anger management, drug evaluation.

09:51:16 6 I came out. It's been two and a half years now.

09:51:20 7 THE COURT: Was this the Chicago Police Department?

09:51:20 8 PROSPECTIVE JUROR BANKS: Yes, ma'am, Chicago.

09:51:22 9 THE COURT: Do you think they treated you fairly?

09:51:24 10 PROSPECTIVE JUROR BANKS: Yes. Yes.

09:51:24 11 THE COURT: Do you have any feelings about the system
09:51:28 12 that might affect your point of view?

09:51:30 13 PROSPECTIVE JUROR BANKS: I think it works. Ma'am, I
09:51:32 14 do not.

09:51:34 15 THE COURT: Thank you. Please be seated.

09:51:38 16 MR. HAMMERMAN: I believe the question you phrased
09:51:40 17 is, if you have been charged with a crime or if you have been
09:51:42 18 a victim. Just based on the first witness -- or the first,
09:51:48 19 I'm sorry, prospective juror before you that we ask any of the
09:51:52 20 prospective jurors' family members also just to be sure we
09:51:58 21 covered in case, there are brothers or sisters.

09:52:00 22 THE COURT: I think that was covered previously. All
09:52:02 23 right. Thank you.

09:52:04 24 MR. HAMMERMAN: Thank you, your Honor.

09:52:26 25 (The following proceedings were had in open court in the

09:52:26 1 presence and hearing of the prospective jurors:)

09:52:26 2 THE COURT: This question might be a bit duplicative
09:52:30 3 of an earlier question, but I would still like a response if
09:52:34 4 the question applies to you.

09:52:34 5 Have you or anyone close to you been employed by a
09:52:40 6 healthcare benefit provider, and I would include insurers that
09:52:46 7 provide medical insurance, anything of that nature, a medical
09:52:48 8 provider?

09:52:56 9 Would any of you have any difficulty or reservations
09:53:00 10 about applying the presumption of innocence and holding the
09:53:06 11 government to its burden of proof proving guilt beyond a
09:53:10 12 reasonable doubt? Would any of you feel uncomfortable with
09:53:16 13 that?

09:53:16 14 Do you have any personal opinions or beliefs that
09:53:24 15 might affect your ability to be fair and impartial to either
09:53:28 16 side in this case?

09:53:32 17 The clerk is now going to call 14 names. If your
09:53:38 18 name is called, please take a chair in the jury box in the
09:53:42 19 same sequence in which your name is called.

09:53:46 20 You will see biographical questionnaires in each
09:53:50 21 chair, and I will be going through those questionnaires with
09:53:56 22 you individually.

09:53:58 23 If your name is not called, please stay in the
09:54:02 24 courtroom because I suspect we will need more than 14 people,
09:54:06 25 we will need to question more than 14 people.

09:54:08 1 All right. Would you proceed?

09:54:12 2 THE CLERK: Rachel Aduana, Kenneth Dumas, Diane

09:54:32 3 Tedore, Robert Kirby, Daniel Muntner, Rhonda Janus, Lori

09:55:02 4 Benshish, Stephanie Ryl, Elizabeth Fleming, John Pope, Thomas

09:55:30 5 Koontz, Robin Gols, April Siegfried, and Corinne Carroll.

09:56:08 6 THE COURT: Beginning with the first person in the

09:56:10 7 first chair closest to me, would you stand and state your full

09:56:14 8 name for us.

09:56:16 9 PROSPECTIVE JUROR ADUANA: I am Rachel Joy Aduana.

09:56:20 10 THE COURT: Yes. And where have you lived during the

09:56:22 11 past 10 years?

09:56:24 12 PROSPECTIVE JUROR ADUANA: I live in 1902 North

09:56:28 13 Pinetree Drive, Arlington Heights, Illinois, and I work at

09:56:34 14 Medline Home Health Care for almost six years. And aside from

09:56:38 15 that, I work as a dialysis technician for almost 11 years.

09:56:46 16 THE COURT: And what do you do at Medline?

09:56:48 17 PROSPECTIVE JUROR ADUANA: I work as a quality

09:56:50 18 assurance.

09:56:50 19 THE COURT: And what are -- when you evaluate

09:56:56 20 quality, quality of what?

09:56:58 21 PROSPECTIVE JUROR ADUANA: We make sure that whatever

09:57:02 22 the doctors order, that it is signed by the doctor and the

09:57:06 23 correct date, and we follow our policy regarding that, and be

09:57:10 24 sure that all doctors' orders was carried out. And we check

09:57:18 25 the -- we do the -- we have nurses that work in the field who

09:57:24 1 are seeing the patients. And we have -- we check the order,
09:57:34 2 the doctor's order. If there's physical therapy, occupational
09:57:38 3 therapy, and home health aide, we be sure that it's all
09:57:42 4 carried out. That's all.

09:57:44 5 THE COURT: Is there anybody else in your household
09:57:48 6 who is employed?

09:57:52 7 PROSPECTIVE JUROR ADUANA: Yeah, my husband. He
09:57:54 8 works at the Walgreens company as a senior network analyst in
09:58:00 9 Deerfield.

09:58:06 10 The rest, I have two kids, eight years old and two
09:58:10 11 and a half years old.

09:58:10 12 THE COURT: They are too young, I guess, for
09:58:12 13 employment.

09:58:16 14 Have you ever served on a jury before or a grand
09:58:18 15 jury?

09:58:20 16 PROSPECTIVE JUROR ADUANA: They called me, but they
09:58:20 17 let me go.

09:58:22 18 THE COURT: Okay. I just need to know if you have
09:58:24 19 ever served, been sworn as a juror.

09:58:28 20 PROSPECTIVE JUROR ADUANA: No.

09:58:30 21 THE COURT: Or a grand juror.

09:58:32 22 What is your educational background?

09:58:34 23 PROSPECTIVE JUROR ADUANA: I was a nurse in
09:58:36 24 Philippines, and I came here, I work as a dialysis technician,
09:58:42 25 and work in -- like in medical field, and I work in home

09:58:52 1 health.

09:58:52 2 THE COURT: And what do you do in home health?

09:58:58 3 PROSPECTIVE JUROR ADUANA: Quality assurance.

09:59:00 4 THE COURT: I see. Have you ever been a party or a
09:59:06 5 witness in a lawsuit or a legal proceeding?

09:59:10 6 PROSPECTIVE JUROR ADUANA: No.

09:59:10 7 THE COURT: Thank you.

09:59:14 8 Next person.

09:59:20 9 PROSPECTIVE JUROR DUMAS: My name is Kenneth Dumas.

09:59:22 10 I have lived in Glendale Heights for the last 10 years. I
09:59:26 11 have had at least four or five employers in the last 10 years.
09:59:32 12 They are all basically within construction trades.

09:59:38 13 My wife is the only other person in my household who
09:59:42 14 works --

09:59:42 15 THE COURT: Who is your employer now?

09:59:44 16 PROSPECTIVE JUROR DUMAS: Right now, Superior
09:59:46 17 Construction.

09:59:50 18 My wife is a membership coordinator at River Forest
09:59:54 19 Country Club.

09:59:54 20 THE COURT: Which country club?

09:59:58 21 PROSPECTIVE JUROR DUMAS: River Forest Country Club
09:59:58 22 in Elmhurst.

10:00:00 23 I have never been on a jury or a grand jury. I have
10:00:08 24 about two classes short of an associate's degree.

10:00:12 25 THE COURT: In what field?

10:00:12 1 PROSPECTIVE JUROR DUMAS: Just general studies.

10:00:18 2 And I have been -- what's it called when they bring

10:00:30 3 you into a room and ask you a bunch of questions?

10:00:32 4 THE COURT: Deposition?

10:00:32 5 PROSPECTIVE JUROR DUMAS: Yes, I have been deposed.

10:00:36 6 THE COURT: What kind of a lawsuit was it?

10:00:36 7 PROSPECTIVE JUROR DUMAS: Workers' compensation.

10:00:40 8 THE COURT: Was it your claim or somebody else's?

10:00:42 9 PROSPECTIVE JUROR DUMAS: Somebody else's.

10:00:42 10 THE COURT: I see. How long ago was that?

10:00:46 11 PROSPECTIVE JUROR DUMAS: Over 10 years.

10:00:48 12 THE COURT: Okay. Thank you.

10:00:56 13 PROSPECTIVE JUROR TEDORE: My name is Diane Tedore.

10:01:00 14 I have lived in Villa Park for six years. Before that, I

10:01:06 15 lived in Iowa and went to school in Indiana.

10:01:08 16 For the past four and a half years, I have been

10:01:10 17 employed at Nicor Gas as an accountant in Naperville. And

10:01:16 18 before that, I was an accountant at two other places. There's

10:01:24 19 no one else in my household.

10:01:26 20 I have never been on a jury. I went to college at

10:01:32 21 the University of Notre Dame. I have a bachelor's of business

10:01:36 22 administration and master's of science in accounting. And I

10:01:40 23 have never been a witness.

10:01:44 24 THE COURT: You haven't been involved in any kind of

10:01:46 25 lawsuit?

10:01:48 1 PROSPECTIVE JUROR TEDORE: No.

10:01:48 2 THE COURT: Thank you.

10:01:50 3 PROSPECTIVE JUROR KIRBY: My name is Robert Kirby. I
10:01:52 4 have lived in Northbrook for the last 20 years. I am employed
10:01:58 5 by a company called Case New Holland that manufactures
10:02:02 6 construction, agricultural equipment. My son works as a
10:02:08 7 computer engineer in California.

10:02:12 8 I served on a jury. I was on a jury three or four
10:02:14 9 years ago in a Cook County case, car accident. I have a J.D.
10:02:22 10 from Washington University. I have never been a party or
10:02:26 11 witness. In my job, one of my -- I work in-house. One of my
10:02:32 12 responsibilities is managing outside litigation, so I am
10:02:36 13 involved in quite a bit of litigation on behalf of my
10:02:38 14 employer. I have given deposition testimony a couple of times
10:02:42 15 involved in primary collections, contract disputes, civil
10:02:48 16 fraud cases.

10:02:50 17 THE COURT: All right. Thank you.

10:02:54 18 PROSPECTIVE JUROR MUNTNER: My name is Dan Muntner.

10:02:58 19 I have lived in Orland Park for the past 25 years. I have
10:03:02 20 been retired for almost 12 years. I work at Silver Lake
10:03:06 21 Country Club. My primarily responsibility is teaching golf.

10:03:12 22 I have a daughter, as I mentioned previously, who is
10:03:14 23 a nurse in Sycamore and another daughter who is a kindergarten
10:03:18 24 teacher in Orland Park. Both of them have been in those jobs
10:03:22 25 for about 10 years. My wife is retired.

10:03:26 1 THE COURT: What did she do prior to retirement?

10:03:30 2 PROSPECTIVE JUROR MUNTNER: She was a

10:03:32 3 paraprofessional in Orland Park District 135.

10:03:34 4 THE COURT: What did she do?

10:03:36 5 PROSPECTIVE JUROR MUNTNER: Teacher's aide.

10:03:38 6 THE COURT: What did you do before you retired?

10:03:40 7 PROSPECTIVE JUROR MUNTNER: I worked for Illinois

10:03:42 8 Bell Ameritech for 30 years primarily as a manager in data

10:03:46 9 processing-related departments.

10:03:48 10 THE COURT: I see.

10:03:50 11 PROSPECTIVE JUROR MUNTNER: I have been -- I'm sorry.

10:03:52 12 THE COURT: Have you ever actually been sworn as a

10:03:56 13 juror?

10:03:56 14 PROSPECTIVE JUROR MUNTNER: Yes, I was a juror on a

10:03:58 15 civil case, Cook County, and I was on a grand jury for 30

10:04:04 16 days.

10:04:04 17 THE COURT: Which court was that? Is that county

10:04:08 18 court?

10:04:08 19 PROSPECTIVE JUROR MUNTNER: It was a county grand

10:04:10 20 jury.

10:04:10 21 THE COURT: Was that at 26th and California or --

10:04:14 22 PROSPECTIVE JUROR MUNTNER: Yes, it was.

10:04:14 23 THE COURT: And as a grand juror, you only heard one

10:04:20 24 side of the story. You realize that this is quite a different

10:04:26 25 proceeding than a grand jury?

10:04:28 1 PROSPECTIVE JUROR MUNTNER: Yes. Yes. Pretty
10:04:30 2 one-sided.

10:04:34 3 I have a high school education and some college.
10:04:38 4 Numerous technical training through the phone company. I
10:04:46 5 guess I answered the last one.

10:04:48 6 THE COURT: No to the last one? Okay.

10:04:52 7 Did you say no to the last one?

10:04:28 8 PROSPECTIVE JUROR MUNTNER: I have not been a party
10:04:56 9 to any kind of civil action.

10:04:58 10 THE COURT: Thank you.

10:05:00 11 PROSPECTIVE JUROR JANUS: My name is Rhonda K. Janus.
10:05:02 12 I have lived in Zion, Illinois, for the last -- forever, 10
10:05:08 13 years. I was -- the last 10 years, I have owned two
10:05:10 14 businesses. I was a pet sitter, professional pet sitter, for
10:05:16 15 10 years; but since the most recent, I own a coffee shop in
10:05:22 16 Zion. My husband and I are partners with another couple in a
10:05:26 17 coffee shop. I was the owner. My husband is retired. It's
10:05:32 18 just he and I in our household.

10:05:34 19 I never served on a jury or grand jury before. High
10:05:38 20 school education, some college. And about three years ago, my
10:05:46 21 husband and I did consult and hired an attorney in order to
10:05:52 22 sell out from the coffee shop.

10:05:54 23 THE COURT: I see.

10:06:00 24 PROSPECTIVE JUROR JANUS: It didn't work out.

10:06:00 25 THE COURT: I see. Thank you.

10:06:02 1 PROSPECTIVE JUROR BENSISH: I am Lori Benshish. I
10:06:06 2 have lived in South Elgin for the last 15 years. I worked for
10:06:08 3 22 years in the Schaumburg school district. I am a speech
10:06:12 4 therapist. My husband is a musician. He is director of music
10:06:18 5 at a church. He is on staff in the music department at
10:06:22 6 Hoffman Estates High School. He has a band, he has a
10:06:26 7 recording studio.

10:06:28 8 I have never served on a jury before. I have a
10:06:32 9 master's degree in communication disorders. And I have never
10:06:36 10 been a party or witness in any kind of legal proceeding.

10:06:40 11 THE COURT: Thank you.

10:06:46 12 PROSPECTIVE JUROR RYL: My name is Stephanie Ryl. I
10:06:48 13 currently -- my permanent home address is Arlington Heights.
10:06:56 14 Right now, I am staying with my fiance in Chicago close to
10:07:00 15 Addison and Ashland. I am an admissions advisor for DeVry
10:07:04 16 University. That's been about four years. Prior to that, I
10:07:10 17 worked for Careerbuilder.com in sales. And prior to that, I
10:07:14 18 was in college. My fiance also works at DeVry University.

10:07:22 19 I have served on a jury. It was in the Rolling
10:07:26 20 Meadows court. It was just a car accident, just like a civil
10:07:30 21 insurance case. My educational background, I have a
10:07:36 22 bachelor's degree from Bradley University in marketing, and I
10:07:40 23 am currently working on my MBA at Keller. I have never been
10:07:48 24 any sort of party or witness.

10:07:52 25 THE COURT: Thank you.

10:07:56 1 PROSPECTIVE JUROR FLEMING: My name is Elizabeth
10:07:58 2 Fleming. I have lived in Riverside for the past 20 years. I
10:08:02 3 have been employed by the law office of Corti, Aleksy &
10:08:06 4 Castaneda for the last 20 years as a legal assistant. No one
10:08:12 5 else in my household is employed.

10:08:16 6 I have never served on a jury. I am a college
10:08:20 7 graduate.

10:08:20 8 THE COURT: What was your field of study?

10:08:24 9 PROSPECTIVE JUROR FLEMING: Criminal justice.

10:08:28 10 THE COURT: Well, let me ask you, the role of the
10:08:30 11 judge at the trial, one of the responsibilities of the judge
10:08:34 12 is to give the jury instructions as to the law that applies to
10:08:40 13 the case. We usually do that at the end of the case.

10:08:46 14 If from your studies of criminal justice you have an
10:08:52 15 opinion that's different than mine about the law, would you be
10:08:54 16 willing to follow my opinion?

10:09:00 17 PROSPECTIVE JUROR FLEMING: Yes.

10:09:00 18 THE COURT: Thank you.

10:09:02 19 PROSPECTIVE JUROR FLEMING: And I have not been a
10:09:04 20 party or witness to any legal proceeding.

10:09:06 21 THE COURT: Thank you. I think you described the
10:09:14 22 specialty of the firm you worked with before?

10:09:18 23 PROSPECTIVE JUROR FLEMING: Workers' compensation.

10:09:18 24 THE COURT: Yes. Thank you.

10:09:22 25 PROSPECTIVE JUROR POPE: John Pope, Jr. Born and

10:09:24 1 raised in Glen Ellyn. Still live there. Been employed with
10:09:30 2 Pope Landscaping, Incorporated, and now owner. I have a wife
10:09:36 3 and two kids. Wife is not employed.

10:09:42 4 I have never actually been on a jury. Done two years
10:09:46 5 at Iowa State University for college background. Never been a
10:09:52 6 party or witness.

10:09:52 7 THE COURT: Thank you.

10:09:58 8 PROSPECTIVE JUROR KOONTZ: My name is Thomas A.
10:10:00 9 Koontz, Jr. I live in Morton Grove. I am employed by Abbott
10:10:06 10 Laboratories, which is a pharmaceutical manufacturer, products
10:10:12 11 manufacturer.

10:10:12 12 THE COURT: What do you do?

10:10:14 13 PROSPECTIVE JUROR KOONTZ: I am an engineer, a
10:10:16 14 maintenance engineer. I support manufacturing activities.
10:10:24 15 My wife is a substitute teacher.

10:10:28 16 THE COURT: Where does she work?

10:10:28 17 PROSPECTIVE JUROR KOONTZ: She works primarily in
10:10:30 18 Morton Grove and Skokie.

10:10:36 19 My daughter is a student and works a part-time job.
10:10:42 20 I have served on a jury on a case that was concluded or
10:10:50 21 determined before we heard any of it.

10:10:52 22 THE COURT: I see. Was it a civil or a criminal
10:10:56 23 case?

10:10:56 24 PROSPECTIVE JUROR KOONTZ: It was a criminal case.

10:10:58 25 THE COURT: Which court was that, federal or state?

10:11:02 1 PROSPECTIVE JUROR KOONTZ: It was about 10 or 12
10:11:04 2 years ago. It was down on Michigan Avenue, about 14th and
10:11:08 3 Michigan. It was kind of a satellite courtroom.

10:11:14 4 THE COURT: I see.

10:11:14 5 PROSPECTIVE JUROR KOONTZ: My educational background,
10:11:16 6 I have a bachelor's of science in chemical engineering. No, I
10:11:22 7 have not been a party or witness in a case.

10:11:24 8 THE COURT: Thank you.

10:11:28 9 PROSPECTIVE JUROR GOLS: Good morning. My name is
10:11:30 10 Robin Gols. I have lived in Chicago for the past 15 years,
10:11:34 11 Jefferson Park neighborhood. I am currently unemployed. I am
10:11:40 12 legally disabled. But what I did in the past, I worked as a
10:11:46 13 customs broker for DHL and for an Italian freight ordering
10:11:54 14 firm.

10:11:54 15 THE COURT: What kind of work did you do for them?

10:12:00 16 PROSPECTIVE JUROR GOLS: I would assess and determine
10:12:02 17 harmonized tariffs applicable to customs duty for import
10:12:06 18 commodities, whether it be foodstuffs or industrial equipment,
10:12:12 19 whatnot.

10:12:14 20 My husband is currently employed as a senior
10:12:18 21 supervisor, air cargo at DHL.

10:12:24 22 I have never served on a jury previously. My
10:12:30 23 educational background, high school diploma and just technical
10:12:38 24 programs. No college, no formal college. And No. 7, never a
10:12:46 25 party or witness in any kind of legal proceeding.

10:12:50 1 THE COURT: Thank you.

10:12:54 2 PROSPECTIVE JUROR SIEGFRIED: April Siegfried. I've
10:12:58 3 lived in the East Rogers Park neighborhood of Chicago for the
10:13:00 4 last 15 years. I am not currently employed but in the last 10
10:13:04 5 years taught web design for DePaul, through DePaul University.
10:13:10 6 My husband --

10:13:10 7 THE COURT: I'm sorry, what do you do at DePaul?

10:13:12 8 PROSPECTIVE JUROR SIEGFRIED: Taught web design
10:13:14 9 through the Institute of Professional Development at DePaul.
10:13:18 10 My husband is a dean at DePaul University, computer
10:13:22 11 science and digital cinema.

10:13:24 12 I have not served on a jury. Completed college --
10:13:32 13 completed high school, a year of college, two years of
10:13:34 14 technical training.

10:13:36 15 I have not been a witness or a party in a legal
10:13:40 16 proceeding.

10:13:42 17 THE COURT: Thank you.

10:13:46 18 PROSPECTIVE JUROR CARROLL: My name is Corinne
10:13:48 19 Carroll. For the last 17 years, I've lived in Round Lake
10:13:52 20 Beach. For the last three years, I've worked for a
10:13:58 21 (inaudible). I am the only person in my household who is
10:14:00 22 employed.

10:14:04 23 I have never served on a jury of any kind. I have a
10:14:10 24 BA in English. And I have never been a party or witness.

10:14:22 25 THE COURT: Never been a party or witness in a legal

10:14:24 1 proceeding?

10:14:26 2 PROSPECTIVE JUROR CARROLL: No.

10:14:26 3 THE COURT: All right. I will ask counsel to prepare
10:14:30 4 their lists. It will be a few minutes. I will ask everybody
10:14:34 5 to be patient.

10:14:36 6 You can step out in the hallway. That's the lockup
10:14:40 7 in there.

10:14:46 8 MR. JONES: I have seen it.

10:14:50 9 MR. HAMMERMAN: Your Honor, may we use the room to
10:14:52 10 the right of the bench?

10:14:54 11 THE COURT: No. That's part of my chambers. No.
10:14:56 12 You can sit out in the hallway if you'd like.

10:23:10 13 (Brief pause.)

10:23:12 14 THE COURT: The courtroom deputy in a few minutes is
10:23:14 15 going to read several of your names. If your name is read, it
10:23:18 16 means that you're excused as potential jurors in this case.
10:23:24 17 And believe me, I appreciate the time you've spent and the
10:23:30 18 candor with which you've addressed the questions.

10:23:34 19 If your name is called, please return to the
10:23:38 20 second-floor jury room.

10:23:40 21 THE CLERK: Rachel Aduana, Diane Tedore --

10:23:48 22 THE COURT: Could you leave the questionnaires in the
10:23:48 23 chairs, please.

10:23:50 24 THE CLERK: Robert Kirby, Elizabeth Fleming, Corinne
10:24:04 25 Carroll.

10:24:16 1 THE COURT: I am going to ask those remaining in the
10:24:18 2 first row, would you move to your right. Stay in the same
10:24:24 3 sequence, though.

10:24:40 4 And the first three people closest to me in the
10:24:44 5 second row, would you stay in the same order and move down to
10:24:48 6 the first row. And the last person, can the last person in
10:24:54 7 the second row, last from my point of view, will take the
10:25:00 8 first chair in the second row.

10:25:02 9 Oh, I'm sorry. I neglected somebody. Exactly.
10:25:26 10 Exactly. Thank you. Musical chairs.

10:25:50 11 THE CLERK: Mark Aguilar, Roberta Martinak, Loy
10:26:06 12 Baluyot, Nathan Willert, and Scott Enke.

10:26:22 13 THE COURT: All right. Will the first new person in
10:26:26 14 the jury box stand and go through the questionnaire with us.

10:26:30 15 PROSPECTIVE JUROR AGUILAR: My name is Mark Aguilar.
10:26:32 16 I have lived for the past 10 years in Chicago, Bridgeport
10:26:38 17 neighborhood. I have been employed with Critical Care
10:26:42 18 Systems. It's a home infusion company based in Elmhurst,
10:26:46 19 Illinois. I have been there for 14 years. My wife is
10:26:50 20 currently an RN at neuro ICU at University of Illinois Chicago
10:26:56 21 Hospital on Taylor Street.

10:26:58 22 I have served on two juries, both at 26th and
10:27:02 23 California, and once as a juror and as an alternate juror,
10:27:10 24 both of them murder cases.

10:27:12 25 My background education, I -- high school education,

10:27:16 1 some college, technical training as a pharmacy technician.

10:27:22 2 And I have not been in any court-related matters personally.

10:27:28 3 THE COURT: All right. Thank you.

10:27:32 4 PROSPECTIVE JUROR MARTINAK: My name is Roberta

10:27:34 5 Martinak. I have been a resident in Plainfield for over 20

10:27:38 6 years. My employer, I have been at LaGrange Hospital for 32.

10:27:44 7 My son, the only one home, works for Apple.

10:27:48 8 THE COURT: All right. Going back to --

10:27:54 9 PROSPECTIVE JUROR MARTINAK: Yes.

10:27:54 10 THE COURT: Would you tell us more detail what the
10:27:56 11 nature of your work is.

10:27:58 12 PROSPECTIVE JUROR MARTINAK: I work in a laboratory.

10:28:00 13 I am support services league, so I am in charge of phlebotomy,
10:28:06 14 clerical, policies, procedures, payroll.

10:28:10 15 My husband works in purchasing at LaGrange as well.

10:28:14 16 He's been there over 10 years.

10:28:18 17 THE COURT: LaGrange Hospital?

10:28:20 18 PROSPECTIVE JUROR MARTINAK: Yes, ma'am.

10:28:20 19 And then I teach phlebotomy certification at Joliet
10:28:24 20 Junior. I have been there three, four semesters now. Again,
10:28:28 21 my son is the only one out of the four that's home, and he
10:28:32 22 works for Apple in Naperville.

10:28:34 23 THE COURT: What does he do?

10:28:36 24 PROSPECTIVE JUROR MARTINAK: He is -- it sounds
10:28:38 25 silly, but he is at the level of genius.

10:28:42 1 THE COURT: He is your son.

10:28:44 2 PROSPECTIVE JUROR MARTINAK: And it's each level. He
10:28:48 3 does a lot of the programming repairing, people bring things
10:28:50 4 in, and they need to be tweaked or informed.

10:28:52 5 THE COURT: Your other three children, are they
10:28:56 6 employed?

10:28:56 7 PROSPECTIVE JUROR MARTINAK: Yes. Well, two of the
10:28:58 8 three. My eldest son is, again, a DuPage sheriff; my middle
10:29:04 9 daughter works for Navistar, she works in contracting; and
10:29:10 10 then the youngest one is just going to be a mom.

10:29:16 11 I have been on a jury at Joliet. It was a
10:29:22 12 malpractice case. I have an associate's, science, plus trade
10:29:34 13 over the years for phlebotomy. And I had a workmen's comp
10:29:40 14 case over 10 years ago for myself.

10:29:42 15 THE COURT: Thank you.

10:29:48 16 PROSPECTIVE JUROR BALUYOT GUEVARRA: My name is Loy
10:29:52 17 Theresa Baluyot Guevarra. For the past 10 years, I've lived
10:29:54 18 in Chicago when I was going to school, and right now I live in
10:29:56 19 Gurnee. For the past 10 years, I worked for a land
10:30:04 20 development company, a civil engineer for four years. And
10:30:06 21 right now I am working for Handi-Foil for the county. My
10:30:12 22 husband works for --

10:30:14 23 THE COURT: I'm sorry. What do you do at your
10:30:16 24 present employer's?

10:30:20 25 PROSPECTIVE JUROR BALUYOT GUEVARRA: Accounts

10:30:20 1 receivable and accounting.

10:30:22 2 My husband is a web developer for Brunswick
10:30:26 3 Corporation. And I have a one year old at home that doesn't
10:30:28 4 work.

10:30:30 5 And I have never served on a jury before. My
10:30:34 6 occupational background, I have a B.S. in civil engineering, a
10:30:40 7 graduate certificate in business administration, and I am
10:30:42 8 currently pursuing my MBA. And I have never been a party or
10:30:46 9 witness in a legal proceeding.

10:30:48 10 THE COURT: Thank you.

10:30:52 11 PROSPECTIVE JUROR WILLERT: Good morning. My name is
10:30:54 12 Nathan Willert. I currently live in Plainfield for the last
10:30:56 13 seven years. Before that, I was living here in Chicago.
10:30:58 14 Currently work for Cintas Corporation. It will be 10 years in
10:31:04 15 June. I am a market sales manager out of Schaumburg, so my
10:31:08 16 role is to -- I have a team of eight people that report to me,
10:31:12 17 we bring in new business as far as companies that would rent
10:31:16 18 uniforms, floor mats, other products and services from us. My
10:31:20 19 wife is a loan officer for Diamond Bank in Schaumburg.

10:31:26 20 I have never served on a jury or grand jury before.
10:31:30 21 I have a bachelor's degree from University of Illinois in
10:31:32 22 economics. And never been a witness in any kind of legal
10:31:36 23 proceeding.

10:31:36 24 THE COURT: Thank you.

10:31:42 25 PROSPECTIVE JUROR ENKE: I am Scott Enke. Past 10

10:31:44 1 years, I have lived in Naperville, Omaha, Nebraska, and
10:31:48 2 Plainfield. Last 10 years of employment, I have been with AJ
10:31:54 3 Dynamics and currently Covidien Neurovascular.

10:32:00 4 THE COURT: What do you do?

10:32:02 5 PROSPECTIVE JUROR ENKE: I am a clinical specialist
10:32:04 6 and sales manager for Covidien.

10:32:08 7 THE COURT: What kind of -- would you describe the
10:32:10 8 practice?

10:32:14 9 PROSPECTIVE JUROR ENKE: Basically working closely
10:32:16 10 with physicians with new medical device products new to the
10:32:18 11 market, and also the sales side of that as well. So training
10:32:22 12 and then also usage and procedures.

10:32:24 13 THE COURT: Could you kind of describe the general
10:32:26 14 nature of the products that you work with.

10:32:14 15 PROSPECTIVE JUROR ENKE: Yes. They are neurovascular
10:32:34 16 products, so they're mechanical stroke devices, neuro coils
10:32:36 17 for brain aneurysms, liquid embolic systems for brain AVMs.

10:32:42 18 THE COURT: I see. Thank you.

10:32:44 19 PROSPECTIVE JUROR ENKE: My wife stays at home with
10:32:48 20 our 10 month old, so no one else is employed.

10:32:50 21 Never served on a jury before. My background is BA
10:32:56 22 from the University of Iowa, MBA from the University of Notre
10:33:00 23 Dame. Have I ever been -- never been a witness to a legal
10:33:04 24 proceeding.

10:33:04 25 THE COURT: All right. Thank you.

10:33:10 1 If counsel would like to consult out in the hallway,
10:33:14 2 that would be fine.

10:37:00 3 (Brief pause.)

10:38:02 4 THE COURT: In a few minutes, the courtroom deputy is
10:38:04 5 going to call several names. If your name is called, please
10:38:10 6 return to the second-floor jury room with our sincere
10:38:14 7 appreciation for your help today.

10:38:16 8 THE CLERK: Mark Aguilar, Roberta Martinak.

10:38:30 9 THE COURT: Would the three people -- yes, you know
10:38:32 10 the routine, keeping the same order, would you move to your
10:38:36 11 right.

10:38:46 12 The 12 of you have been selected by both sides to be
10:38:50 13 the jury in the case. We will need two alternates, but we can
10:38:58 14 in the meantime administer the oath to the jury and excuse
10:39:02 15 them from the questioning of the alternates.

10:39:06 16 Would you all please stand.

10:39:10 17 (Jury sworn.)

10:39:26 18 THE COURT: You may leave your questionnaires in the
10:39:30 19 chairs, and the courtroom deputy, Ms. Rone, will show you the
10:39:36 20 jury room.

10:39:36 21 Please don't discuss the case. After we select the
10:39:40 22 alternates, we will take a break, and I will give you some
10:39:44 23 preliminary instructions about the trial and the dos and
10:39:50 24 don'ts for jurors, that sort of thing.

10:39:52 25 So in the meantime, feel free to discuss whatever you

10:39:56 1 wish, but don't discuss the case. Thank you.

10:40:30 2 (The jury leaves the courtroom.)

10:40:30 3 THE COURT: Please be seated. The clerk will be back
10:40:32 4 in a moment. The clerk will be calling four names. We will
10:40:42 5 call the four people who will take the first four empty chairs
10:40:52 6 closest to me in the front row of the jury box.

10:40:52 7 (Brief pause.)

10:44:28 8 THE COURT: Well, I am not sure what happened to the
10:44:30 9 clerk, but I do have a copy of the jury list here, so I will
10:44:32 10 call the next four names.

10:44:36 11 Susanne Carroccia, James Pfister, Ingo Pilli,
10:45:10 12 P-i-l-l-i, Shirley Belcher.

10:45:32 13 PROSPECTIVE JUROR CARROCCIA: Hi. My name is Susanne
10:45:36 14 Carroccia. I lived in Lake Villa, Illinois, for the past 12
10:45:40 15 years. I have been employed at BMO Harris Bank as a portfolio
10:45:44 16 manager for the past 17 years. I do underwriting for
10:45:48 17 commercial loans. My husband is an I.T. person, so
10:45:52 18 information technologies, desktop support. He works for a
10:45:56 19 company called CoreTech, but he is a contractor at Abbott
10:46:02 20 Laboratories doing I.T. work.

10:46:04 21 I have never served on a jury. My educational
10:46:08 22 background, I have a BA in economics and a master's in
10:46:10 23 business administration. And I have never been a party or
10:46:14 24 witness to any legal proceedings.

10:46:16 25 THE COURT: Thank you.

10:32:12 1 PROSPECTIVE JUROR PFISTER: Good morning. James
10:46:22 2 Pfister. I have lived here for about five years and Baltimore
10:46:26 3 for about three years and, prior to that, Pennsylvania. I
10:46:32 4 have been employed with Marriott International for
10:46:36 5 approximately the last eight years, and then prior to that, I
10:46:38 6 was in school.

10:46:40 7 THE COURT: What do you do with Marriott?

10:46:44 8 PROSPECTIVE JUROR PFISTER: Banquet manager. My
10:46:48 9 responsibilities for the job is kind of taking care of the
10:46:52 10 banquet servers and banquet bartenders, running functions. My
10:46:58 11 wife is a sales manager at Marriott at the regional sales
10:47:02 12 office in Rosemont.

10:47:08 13 I have never served on a jury. My education, I have
10:47:14 14 a bachelor in hospitality at Pennsylvania State University.

10:47:22 15 And on question 7, can I have a sidebar on that one?

10:47:26 16 THE COURT: Yes.

10:47:26 17 (Whereupon, the following discussion was had at the bench
10:47:50 18 outside the hearing of the prospective jurors:)

10:47:50 19 PROSPECTIVE JUROR PFISTER: It was probably about 15
10:47:56 20 years ago, I was arrested on possession of marijuana, but then
10:48:00 21 later I was -- it was dropped.

10:48:02 22 THE COURT: I see. The charges were dismissed?

10:48:04 23 PROSPECTIVE JUROR PFISTER: Yes.

10:48:06 24 THE COURT: How old were you?

10:48:08 25 PROSPECTIVE JUROR PFISTER: Probably 17 or 18.

10:48:10 1 THE COURT: Is there anything about that experience
10:48:12 2 that --

10:48:12 3 PROSPECTIVE JUROR PFISTER: No.

10:48:14 4 THE COURT: -- that carries over in terms of your
10:48:16 5 views of law enforcement or views of courts?

10:48:20 6 PROSPECTIVE JUROR PFISTER: No. No.

10:48:20 7 THE COURT: All right.

10:48:24 8 PROSPECTIVE JUROR PFISTER: It was like 18 years ago.

10:48:24 9 THE COURT: Thank you.

10:48:24 10 (The following proceedings were had in open court in the
10:48:40 11 presence and hearing of the prospective jurors:)

10:48:40 12 PROSPECTIVE JUROR PILLI: My name is Ingo Pilli.

10:48:42 13 I've lived in Arlington Heights for the past 10 years. Been
10:48:44 14 employed by Regis Technologies. We're a pharmaceutical
10:48:50 15 manufacturer. My wife works for Greenbrier School in
10:48:54 16 Arlington Heights as an administrative assistant.

10:48:58 17 I have served on a jury in a criminal case, and there
10:49:00 18 was a verdict returned.

10:49:02 19 THE COURT: Which court was that?

10:49:06 20 PROSPECTIVE JUROR PILLI: 26th and California.

10:49:08 21 THE COURT: What was the charge, if you recall?

10:49:10 22 PROSPECTIVE JUROR PILLI: Drug sales.

10:49:10 23 THE COURT: I see.

10:49:12 24 PROSPECTIVE JUROR PILLI: I have a degree in chemical
10:49:16 25 engineering. And I have not been a witness to a legal

10:49:18 1 proceeding.

10:49:18 2 THE COURT: Thank you.

10:49:24 3 PROSPECTIVE JUROR BELCHER: Shirley Belcher. I lived
10:49:26 4 in Bloomington for the last 20 years. I am employed at
10:49:30 5 JCPenney in commission sales. Previous to that, I was in
10:49:34 6 Montgomery Wards in the same position. My husband is retired.

10:49:38 7 THE COURT: What did he do before he was retired?

10:49:40 8 PROSPECTIVE JUROR BELCHER: He was human resources
10:49:42 9 for the shoe department in K-Mart, and then he was a car
10:49:46 10 salesman.

10:49:48 11 I have never been on a jury. And I have a high
10:49:52 12 school education. And I have never been party to any legal
10:49:56 13 proceedings.

10:49:56 14 THE COURT: All right. Thank you. I will see
10:50:00 15 counsel at sidebar.

10:50:00 16 (Whereupon, the following discussion was had at the bench
10:50:16 17 outside the hearing of the prospective jurors:)

10:50:16 18 THE COURT: Each side has one preemptory on
10:50:24 19 alternates. Are you prepared?

10:50:26 20 MR. JONES: It will just take a second.

10:50:30 21 THE COURT: I will wait over here.

10:50:30 22 (Brief pause.)

10:50:30 23 (The following proceedings were had in open court in the
10:52:56 24 presence and hearing of the prospective jurors:)

10:52:56 25 THE COURT: I'd like to thank the two of you. We

10:53:00 1 have two more people than we need, but that's always a good
10:53:02 2 situation for a judge. I thank you very much. Mr. Pfister,
10:53:10 3 you're excused, and Mr. Pilli. Thank you.

10:53:30 4 I guess it will be my job to administer the oath to
10:53:34 5 the alternates. In the meanwhile, I will excuse the rest of
10:53:44 6 the people who appeared today for jury selection. And we
10:53:50 7 didn't quite get to you, almost, but thank you very much.
10:53:54 8 Would you return to the jury room on the second floor.

10:53:58 9 Please stand to be sworn.

10:54:00 10 (Alternate jurors sworn.)

10:54:36 11 THE COURT: You may join the rest of the jury in the
10:54:38 12 jury room. Would you show the alternates.

10:54:52 13 (Alternate jurors excused.)

10:55:00 14 THE COURT: We will take a 20-minute recess, let's
10:55:02 15 say 15-minute recess so we can get openings in before lunch.
10:55:06 16 We will take a lunch break for an hour.

10:55:08 17 Thank you.

10:55:10 18 (Short break.)

11:13:30 19 (The jury entered the courtroom.)

11:13:30 20 THE COURT: Well, members of the jury, welcome. And
11:13:34 21 before we hear from the lawyers in opening statements, I would
11:13:38 22 like to say a few words about your role in the case, my role,
11:13:42 23 and the role of the lawyers. We all have important roles, but
11:13:48 24 they're distinctly different roles, and we must keep those
11:13:50 25 different roles in mind.

11:13:52 1 It will be your duty as jurors to find from the
11:13:56 2 evidence what the facts are. You and you alone are the judges
11:14:02 3 of the facts. You will then apply the facts to the law that I
11:14:08 4 will give you in the form of jury instructions at the end of
11:14:12 5 the case.

11:14:14 6 You must follow the law whether or not you personally
11:14:18 7 agree with the law.

11:14:20 8 Nothing I may do or say during the trial is intended
11:14:26 9 to communicate any message to you as to what your verdict
11:14:30 10 should be. That decision is yours and yours alone.

11:14:34 11 The evidence from which you will find the facts will
11:14:40 12 consist of testimony from witnesses who will come before you
11:14:46 13 here in the witness box and testify. There will also be a
11:14:52 14 number of physical exhibits that may be offered into evidence.
11:15:00 15 And at the end of the trial, you will have access to the
11:15:04 16 physical exhibits that are offered in evidence.

11:15:10 17 Now, certain things are not evidence, and you have to
11:15:14 18 keep that in mind as well. The statements, arguments,
11:15:20 19 questions of the lawyers are not evidence. The lawyers on
11:15:24 20 each side are advocates, able advocates for their clients, so
11:15:32 21 they will be making an opening statement, closing arguments,
11:15:44 22 examining witnesses, cross-examining witness, and occasionally
11:15:48 23 probably making some objections. Those statements by lawyers
11:15:50 24 are not evidence. The opening statements and closing
11:16:02 25 arguments are to give you an understanding of each side's

11:16:02 1 point of view, and each side will be using their persuasive
11:16:06 2 skills for whatever their point of view is. Just remember
11:16:08 3 that those statements are not evidence.

11:16:14 4 Any testimony that I exclude or exhibits I don't
11:16:24 5 admit into evidence are not evidence and must not be
11:16:28 6 considered.

11:16:30 7 Anything you have seen or heard outside the courtroom
11:16:34 8 is not evidence. As you have heard me say probably a half
11:16:38 9 dozen times this morning, the important -- one of the
11:16:44 10 important aspects, essential aspects of a jury trial is the
11:16:50 11 consideration of evidence that is before you, not outside
11:16:54 12 influences of any kind.

11:16:56 13 There are basically two kinds of evidence:
11:17:00 14 circumstantial evidence and direct evidence. Direct evidence
11:17:06 15 is evidence that a witness who has personal knowledge
11:17:14 16 testifies about. Circumstantial evidence is the proof of a
11:17:20 17 fact through a number of facts and circumstances that lead you
11:17:24 18 to a reasonable conclusion. For example, when you entered the
11:17:32 19 courthouse today, at least when I entered, it wasn't raining,
11:17:36 20 but if you see some people coming in from outside who have
11:17:44 21 umbrellas that are wet and dripping, you can conclude
11:17:48 22 reasonably that, well, it's raining now or it's rained since
11:17:52 23 you came in the building. That's a circumstance that you can
11:17:56 24 conclude that can support a conclusion with a reasonable
11:18:00 25 inference.

11:18:02 1 It will be one of your most important roles to assess
11:18:12 2 the believability or the credibility of the witnesses and to
11:18:16 3 decide what weight, if any, you decide a witness' testimony
11:18:24 4 should have. That will be your decision and yours alone. So
11:18:30 5 as the witnesses testify, keep that in mind in assessing and
11:18:34 6 evaluating the demeanor and credibility of the witnesses. And
11:18:40 7 I will give you some further instructions about the general
11:18:44 8 guidelines of determining witness credibility in the final
11:18:48 9 instructions.

11:18:48 10 Well, as you know, this is a criminal case. There
11:18:54 11 are some basic rules that apply to criminal cases. These
11:18:58 12 rules don't apply to civil cases, they apply to criminal
11:19:02 13 cases.

11:19:02 14 The defendant is presumed to be innocent. It is the
11:19:12 15 indictment -- the indictment against the defendant is an
11:19:16 16 allegation or, in this case, allegations, and it is a general
11:19:22 17 accusation and nothing more. The indictment is not proof of
11:19:26 18 guilt or anything else. Therefore, Dr. Chhibber starts the
11:19:34 19 trial with a complete -- with a clean slate.

11:19:40 20 Second, the burden of proof is on the government at
11:19:44 21 all times. It is the government's burden to show guilt as to
11:19:48 22 each charge beyond a reasonable doubt. The defendant has no
11:19:54 23 burden to prove his innocence or to present any evidence at
11:19:58 24 all or to testify.

11:20:04 25 So the law and the Constitution prohibit us from

11:20:08 1 considering the fact the defendant may not testify -- may or
11:20:14 2 may not decide to testify.

11:20:16 3 The third principle is, of course, the one that the
11:20:20 4 government must prove each charge beyond a reasonable doubt,
11:20:26 5 and you keep this burden in mind throughout the trial.

11:20:30 6 Some of the general matters of service on a jury were
11:20:42 7 probably covered during your orientation with the clerk, but I
11:20:46 8 want to stress several of them that are essential.

11:20:52 9 During the trial of the case, you are not to discuss
11:20:56 10 the case with anyone. Now, I know this is easy for me to say
11:21:02 11 but much more difficult for you to do. I am sure family and
11:21:08 12 friends will want to know why you're down here and what's
11:21:12 13 going on and is it interesting, et cetera. The reason why we
11:21:20 14 have this difficult requirement is because of the danger of
11:21:26 15 outside influences and the danger if you start discussing the
11:21:30 16 case among yourselves before you have heard everything and
11:21:34 17 before you have heard the instructions of law that apply to
11:21:38 18 the case would likely rush you to a judgment in the case way
11:21:42 19 before you have heard all the evidence, way before you have
11:21:46 20 heard the jury instructions. And so it's essential to the
11:21:52 21 integrity of the trial to not discuss the case or to
11:21:58 22 deliberate among yourselves as the trial goes on.

11:22:02 23 At the end of the case, after the closing arguments,
11:22:06 24 I will give you the instructions of law that apply to the
11:22:10 25 case, and then you can discuss the case, of course, to

11:22:18 1 whatever extent the jury determines is appropriate.

11:22:24 2 I do ask you to use the back elevator and the bank of
11:22:30 3 elevators that was closest to the courtroom, and I ask that
11:22:38 4 the lawyers and witnesses or people associated with either
11:22:44 5 side in the case use the north bank of elevators so we don't
11:22:50 6 have everybody getting on the same elevator and avoid contact
11:22:58 7 outside the courtroom. If you see somebody involved in the
11:23:06 8 case coming into the building or someplace else, they are not
11:23:14 9 going to be friendly with you, and I assure you it's not
11:23:18 10 because they are unfriendly people. But we all respect the
11:23:24 11 sensitivity of your responsibilities and no one in the case
11:23:28 12 will be approaching you or chatting with you.

11:23:36 13 Do not read, watch, or listen to anything about this
11:23:42 14 case or about the issues in this case. I know in this day and
11:23:48 15 age, that's also a difficult one to follow. Again, the case
11:23:58 16 must be decided on the evidence presented here in court, and
11:24:02 17 that means do not access or research the case independently,
11:24:08 18 including online or any other way. That's more of a concern
11:24:14 19 than it used to be, but I will tell you that would compromise
11:24:20 20 your position were you to do research on the case because,
11:24:24 21 again, it's possible you may be influenced by circumstances
11:24:30 22 that would not be admissible evidence or soundly based. And
11:24:36 23 the parties -- each party deserves a fair trial, and this is
11:24:44 24 part and parcel of a fair trial.

11:24:54 25 Finally, do not -- this is implicit in what I said

11:24:58 1 earlier, but do not make any judgment or form an opinion about
11:25:02 2 the case until you have heard everything. That's so important
11:25:08 3 to the integrity of your decision.

11:25:10 4 Now, if you wish, you may take notes. Your notes
11:25:16 5 would not be evidence. You are not obligated to take notes.
11:25:20 6 I see that some of you do have notebooks I guess provided by
11:25:26 7 the courtroom deputy. It's a highly individual decision
11:25:34 8 whether or not a person wishes to take notes. Some people
11:25:38 9 find taking notes is distracting and would rather watch the
11:25:44 10 witness testify. Others find that taking notes keeps them
11:25:50 11 focused and might be helpful in triggering memory.

11:25:58 12 So if you decide for yourselves whether you want to
11:26:02 13 take notes or you might change your opinion at some point as
11:26:06 14 to whether you should or should not, that's fine. But if you
11:26:10 15 take notes, leave your notebooks in the jury room at the end
11:26:12 16 of the day. The clerk keeps the jury room locked, so no one
11:26:20 17 would have access to your notes, and your notes would be
11:26:22 18 destroyed after the trial is concluded.

11:26:30 19 The trial day, we will start at 9:00 and end
11:26:38 20 approximately 4:30, as close to 4:30 as we can, and I would
11:26:44 21 ask that you return to the jury room before 9:00. I would
11:26:54 22 suggest between 8:30 and quarter to 9:00. The clerk will
11:27:02 23 order coffee and something unhealthy for you. So that's good,
11:27:10 24 and we will start at 9:00 o'clock.

11:27:16 25 Sometimes I have other matters in other cases I have

11:27:20 1 to hear, but the first priority is this trial. When I have a
11:27:28 2 jury here, that's always my first priority. So we will do our
11:27:34 3 very best to keep the case on track and on schedule, and, of
11:27:38 4 course, we're dependent on you and the lawyers to all be here
11:27:42 5 and ready to go.

11:27:44 6 We generally take an hour break around noon or
11:27:50 7 shortly thereafter and a 15-, 20-minute break mid morning, mid
11:28:00 8 afternoon. Those are sort of the logistics of the trial.

11:28:06 9 The trial begins with the opening statements by each
11:28:14 10 side. They are not obligated to make an opening statement,
11:28:16 11 but very few lawyers miss the opportunity to address a jury,
11:28:20 12 so I suspect you are going to hear opening statements. They
11:28:24 13 will be relatively brief statements, but they will be designed
11:28:28 14 to help you understand each side's position in the case.
11:28:32 15 Again, those opening statements are not evidence.

11:28:38 16 Opening on behalf of the United States?

11:28:40 17 MR. COLE: Thank you, your Honor.

11:28:42 18 - - -

11:28:44 19 MR. COLE, OPENING STATEMENT

11:28:44 20 MR. COLE: This is a healthcare fraud case. This is
11:28:48 21 a case about a physician who lied about his patient's medical
11:28:54 22 diagnoses. He lied about their health conditions. He did
11:28:58 23 that to justify unnecessary, expensive, and sometimes even
11:29:06 24 painful tests that he billed to insurance companies.

11:29:12 25 This is a case about a physician, the defendant,

11:29:16 1 Jaswinder Chhibber, and his greed.

11:29:22 2 The evidence will show, ladies and gentlemen of the
11:29:26 3 jury, that the defendant ordered unnecessary tests on his
11:29:30 4 patients, unnecessary tests, time and time and time again, and
11:29:40 5 sometimes he didn't even bother to review the results of the
11:29:44 6 tests. He ordered tests and didn't look at the results or
11:29:52 7 interpret them.

11:29:52 8 Ladies and gentlemen of the jury, the evidence will
11:29:58 9 show that when defendant thought someone was looking over his
11:30:02 10 shoulder, was worried, became worried about what someone was
11:30:12 11 thinking about what he was doing, directed his office staff to
11:30:14 12 go back through the patient chart, patient by patient by
11:30:18 13 patient and year by year by year, looking for missing
11:30:24 14 documentation. And he told his office staff to create these
11:30:28 15 documents to make it look as if the defendant had actually
11:30:32 16 reviewed these tests weeks, months, or even years earlier. He
11:30:40 17 did this because he was worried. He was worried about someone
11:30:46 18 figuring out that what he was doing was billing for
11:30:48 19 unnecessary tests and procedures.

11:30:52 20 The evidence will show that the defendant made a lot
11:30:56 21 of money on these tests. He would order echocardiograms,
11:31:00 22 which are an ultrasound examination of the heart, that he was
11:31:06 23 paid by insurance companies like Blue Cross \$300 for this
11:31:10 24 test. He ordered unnecessary tests like carotid doppler
11:31:16 25 ultrasounds, which is an ultrasound of the arteries, the

11:31:20 1 carotid arteries in the neck, looking for blockages which
11:31:24 2 could lead to stroke. He was paid over \$300 for these tests.

11:31:32 3 He made over \$400 for nerve conduction studies, a
11:31:36 4 very painful procedure for many of the patients.

11:31:42 5 He made this money based on unnecessary diagnoses,
11:31:50 6 the unnecessary tests based on fraudulent diagnoses, and he
11:31:56 7 put both in the patient's medical charts as well as on
11:32:00 8 insurance claim forms. These diagnoses he wrote down one
11:32:06 9 after the other, the same diagnoses. You will hear them.
11:32:08 10 Heart murmur, shortness of breath, diagnoses that patients
11:32:14 11 will tell you they did not tell the defendant and the
11:32:18 12 defendant did not tell them.

11:32:20 13 The defendant is charged with eight counts of
11:32:26 14 healthcare fraud and eight counts of making materially false
11:32:30 15 statements in the medical records of his patients.

11:32:36 16 Let me tell you what some of the evidence will show.
11:32:38 17 The first witness you'll hear from is someone named Tiffany
11:32:42 18 Shirley-Terrell. She is going to tell you that she was a
11:32:50 19 student who needed a school physical. She was a student at
11:32:56 20 the Illinois School of Health Careers, and she went to the
11:32:58 21 defendant just to get a physical checkup. She was feeling
11:33:00 22 fine, everything was fine, she just needed a form filled out
11:33:04 23 for school. But she had great insurance. She had Blue
11:33:10 24 Cross/Blue Shield through her husband, and she went to the
11:33:12 25 defendant for a checkup, and she gave him her Blue Cross/Blue

11:33:16 1 Shield identification card. And he examined her, checked her
11:33:20 2 heart, her breathing, felt her neck, and told her that at her
11:33:26 3 age, she needed some additional tests, the ripe old age of 28
11:33:32 4 years old. She got additional tests. She got an
11:33:36 5 echocardiogram, a carotid doppler exam, an EKG, a pulmonary
11:33:48 6 function test; all these tests because the defendant told her
11:33:52 7 she was at that age, that she needed them.

11:33:54 8 Now, he didn't send her out to have these tests
11:33:58 9 performed by a cardiologist or a radiologist. He didn't send
11:34:02 10 her to a hospital or even to a mobile testing facility. No.
11:34:06 11 Waiting in the room next door was an ultrasound technician
11:34:10 12 waiting to perform the ultrasound tests.

11:34:14 13 When defendant sent Tiffany Shirley-Terrell on her
11:34:20 14 way home, she had a clean bill of health. She had a form
11:34:24 15 filled out by the defendant saying she was good, everything
11:34:30 16 was fine. But what she didn't know was what the defendant had
11:34:34 17 written in her permanent medical chart. He wrote that she had
11:34:42 18 a heart murmur, that she had carotid bruit, which is a sound
11:34:50 19 you hear when listening to the blood flow through the arteries
11:34:54 20 of her neck associated with stroke, carotid bruit, heart
11:35:00 21 murmur, shortness of breath, chest pains, dizziness.

11:35:06 22 Ladies and gentlemen of the jury, you will hear from
11:35:08 23 Ms. Shirley-Terrell. She will tell you that she never told
11:35:12 24 the defendant about any of these things. She never said she
11:35:16 25 was dizzy. She never said she was short of breath. She never

11:35:20 1 said she had chest pain. The defendant never told her there
11:35:24 2 was a problem with her heart, that he heard carotid bruit.
11:35:32 3 But all these things are exactly what he wrote down on her
11:35:36 4 permanent medical chart. And that's not all. These are the
11:35:42 5 diagnoses he put on the claim form that he submitted to Blue
11:35:48 6 Cross/Blue Shield to justify the tests that he ordered.

11:35:52 7 You will see, ladies and gentlemen of the jury, for
11:35:54 8 this ultrasound, for this simple medical physical exam for her
11:36:04 9 school, for the physical for the school, plus all these tests,
11:36:08 10 the defendant billed Blue Cross/Blue Shield over \$1600. You
11:36:16 11 will hear that Blue Cross paid for a very large percentage of
11:36:22 12 that.

11:36:22 13 Let me tell you about some of the other patients you
11:36:24 14 will hear from. You will hear from someone named Terrell
11:36:30 15 Cole. Now, Terrell Cole, like Ms. Shirley-Terrell, went to
11:36:36 16 the defendant's clinic for a checkup. His grandmother had
11:36:40 17 been sick, and she wanted him just to look out for his health.
11:36:44 18 So he went for a checkup. He went to the defendant's clinic
11:36:48 19 on 79th Street on the South Side of Chicago in February 2010.
11:36:54 20 And at that time, Terrell Cole was just 30 years old and had a
11:37:00 21 Blue Cross/Blue Shield insurance card. The defendant examined
11:37:04 22 Terrell Cole, listened to his breathing, listened to his
11:37:12 23 heart. Perfect. That's what he said. That's what the
11:37:14 24 defendant told Terrell Cole after listening to his heart.
11:37:20 25 Perfect.

11:37:22 1 But you don't have to take Terrell Cole's word for
11:37:26 2 it. You could actually listen to what the defendant said for
11:37:28 3 yourself because Terrell Cole's real name is not Terrell Cole.
11:37:34 4 It's FBI Special Agent Dennaris Coleman, who went to the
11:37:40 5 defendant in an undercover capacity wearing a recording
11:37:44 6 device, and you can hear exactly what happened during that
11:37:50 7 visit, and you can hear the defendant describe Terrell Cole as
11:38:00 8 perfect.

11:38:00 9 But that's not what the defendant wrote in Terrell
11:38:04 10 Cole's medical chart. He wrote that Terrell Cole, Special
11:38:10 11 Agent Dennaris Coleman, had a heart murmur. And when the
11:38:12 12 defendant submitted the claims to Blue Cross/Blue Shield for
11:38:14 13 the EKG, that was the diagnosis he used to justify the test.
11:38:20 14 He didn't tell Blue Cross that Terrell Cole was perfect. He
11:38:26 15 said that Terrell Cole had a heart murmur.

11:38:30 16 You are going to hear from other patients as well,
11:38:32 17 both FBI special agents and real patients. You are going to
11:38:36 18 hear from real patients like Cierra Thompson, like Alan Vaval,
11:38:42 19 and what they are going to tell you is what they told the
11:38:46 20 defendant about their medical conditions and their symptoms
11:38:50 21 and what the defendant told them about what he was finding.
11:38:54 22 There is absolutely no relation to what the defendant wrote in
11:38:58 23 the medical charts of these patients. There is no relation to
11:39:04 24 the diagnoses he submitted to Blue Cross/Blue Shield to
11:39:08 25 justify the tests that he ordered.

11:39:10 1 You're going to hear from additional FBI special
11:39:16 2 agents. You are going to hear from Brian Cipry and Brian
11:39:20 3 Watts. They are going to tell you the exact same thing, that
11:39:24 4 what they told the defendant and the defendant told them about
11:39:26 5 their medical conditions does not match what's in the medical
11:39:30 6 charts written by the defendant.

11:39:34 7 You're also going to hear from FBI Special Agent
11:39:38 8 Robert Fortt, who went to the defendant's clinic and, after
11:39:42 9 several hours, went home, but written in his medical chart is
11:39:48 10 an order for tests. Without ever seeing Robert Fortt, the
11:39:54 11 defendant said that he should have tests, expensive tests like
11:39:58 12 the ones you've heard about.

11:40:00 13 Now, you're also going to hear from defendant's
11:40:04 14 office staff. You're going to hear from the receptionist, the
11:40:06 15 technicians, the people who knew what was going on at the
11:40:10 16 clinic. And one of the things they're going to tell you is
11:40:14 17 that patients were scheduled at the clinic for 9:00 in the
11:40:18 18 morning and the defendant showed up about 11:00 o'clock or
11:40:22 19 even later, and during that time that the patients were there
11:40:24 20 and the defendant wasn't, he would call in to the clinic, call
11:40:28 21 in and ask about who was at the clinic, and he would order
11:40:34 22 tests. And you will learn the questions that he asked his
11:40:38 23 staff before he ordered tests. You will hear that he asked
11:40:44 24 his staff when was the last time they had tests and what
11:40:48 25 insurance did the patients have. When was the last time they

11:40:52 1 had tests and what was their insurance company.

11:40:58 2 What he did not ask is why they were there. What he
11:41:02 3 did not ask was how they were doing.

11:41:04 4 This was true for patients that he treated previously
11:41:10 5 and for patients the defendant had never even seen, like
11:41:18 6 Special Agent Robert Fortt.

11:41:18 7 You will hear other evidence as well. You will see
11:41:22 8 lists of patients who were treated on the same day, and for
11:41:26 9 patient after patient, for many of them, they received the
11:41:30 10 same expensive ultrasound tests, patient after patient, time
11:41:40 11 and again.

11:41:40 12 You are also going to hear from representatives of
11:41:44 13 insurance companies like Blue Cross, and they are going to
11:41:46 14 tell you that the defendant submitted claims to Blue Cross for
11:41:50 15 these procedures. And you are also going to learn how
11:41:52 16 physicians submit claims for reimbursement. You are going to
11:41:56 17 hear about this medical claim form. The medical claim form,
11:42:00 18 you will learn, includes the patient, includes the date of
11:42:04 19 service, it includes codes describing specifically what tests
11:42:08 20 and procedures were performed. And you are going to learn
11:42:12 21 also that this claim form includes diagnoses, diagnoses that
11:42:18 22 justify, that explain, why these tests were ordered. You will
11:42:24 23 hear that when these diagnoses support the tests, insurance
11:42:30 24 companies paid the claims. It was simple, it was easy, the
11:42:36 25 money rolls out the door from the insurance companies into the

11:42:38 1 defendant's pocket.

11:42:44 2 If the tests and the procedures don't match each
11:42:46 3 other, there are issues, there are concerns, they look deeper
11:42:50 4 what's going on. And this is why it is very important that
11:42:54 5 the defendant lied in his medical chart as well. Insurance
11:43:00 6 companies have the right to review physician medical charts,
11:43:04 7 and they do it periodically. They audit the physician's
11:43:08 8 claims. They go back and look behind the claim form and see
11:43:12 9 what the physicians write in their medical chart. And the
11:43:16 10 defendant knew this, which is why he lied both on the claim
11:43:20 11 form and on the medical chart for his patients.

11:43:24 12 Now, you will hear from employees of the clinic that
11:43:32 13 sometime around the summer of 2010, they were interviewed by
11:43:34 14 law enforcement. Defendant found out about the investigation.
11:43:40 15 And when he did, the number of tests that he ordered dropped.
11:43:46 16 Didn't drop a little; it dropped dramatically for many of
11:43:50 17 these tests. When the defendant figured out he was under the
11:43:56 18 microscope, he stopped ordering so many tests.

11:44:00 19 Ladies and gentlemen of the jury, the defendant is
11:44:04 20 charged in a 16-count indictment with healthcare fraud and
11:44:10 21 with making false statements in his patients' medical records.
11:44:14 22 You will hear that defendant did whatever it took to keep the
11:44:20 23 insurance money flowing. He lied on claim forms, he lied in
11:44:28 24 his patients' medical charts, he performed unnecessary and
11:44:32 25 painful tests to keep the money coming, and at the end of the

11:44:38 1 case, you will have no reasonable doubt that the defendant is
11:44:46 2 guilty of the crimes charged.

11:44:48 3 THE COURT: Thank you.

11:44:50 4 Opening statement on behalf of Dr. Chhibber?

11:44:52 5 MR. JONES: Yes, your Honor.

11:44:52 6 - - -

11:44:54 7 MR. JONES, OPENING STATEMENT

11:44:54 8 MR. JONES: May it please the court, counsel, and
11:44:56 9 ladies and gentlemen of the jury. As you probably know, my
11:45:00 10 name is Walter Jones, Jr., and along with Mr. Cifonelli,
11:45:06 11 Mr. Orman, it is our pleasure to represent Dr. Chhibber in
11:45:08 12 this case.

11:45:10 13 As you've heard, it is the government's argument in
11:45:14 14 this case that Dr. Chhibber devised a scheme to defraud the
11:45:20 15 health benefit plan which is namely in this case Blue
11:45:24 16 Cross/Blue Shield; that is, that somehow he submitted claims
11:45:28 17 for payment that were not medically necessary and that the
11:45:32 18 diagnosis for those claims were false.

11:45:34 19 We have entered a plea of not guilty in this case and
11:45:38 20 we will tell you and we will show you that we unequivocally
11:45:44 21 deny those charges.

11:45:44 22 Now, before I begin, I just want to reiterate
11:45:48 23 something. I want to take this opportunity to remind you what
11:45:50 24 you just heard was the court's charge; that in this case, it
11:45:56 25 is not Dr. Chhibber's burden to prove anything in this case.

11:45:58 1 This is a criminal case. It's not a negligence case. It is
11:46:04 2 the government's burden to prove throughout this case that he
11:46:08 3 intentionally devised a scheme to defraud Blue Cross and Blue
11:46:16 4 Shield, and that burden remains with the government throughout
11:46:18 5 this case.

11:46:18 6 Now, with that said, I'd like to preface my remarks
11:46:24 7 by telling you that what the evidence is really going to show
11:46:26 8 in this case is that Dr. Chhibber is a respected physician who
11:46:34 9 has devoted himself to curing the medical problems of his
11:46:38 10 community.

11:46:38 11 Let me just take a moment to give you Dr. Chhibber's
11:46:42 12 background. He indeed -- he is a native of India, and as
11:46:46 13 such, he graduated from medical school in India in 1985.
11:46:50 14 Significantly, he was number one in his class. And after
11:46:54 15 graduating from medical school, he completed a three-year
11:46:58 16 residency in orthopedic surgery in India. Upon graduation, he
11:47:04 17 attended -- he was an attending physician in orthopedic
11:47:10 18 surgery in the trauma ward.

11:47:12 19 In 1990, he traveled to the United States and first
11:47:16 20 passed his board examinations. Second, in 1992, he did what
11:47:20 21 all doctors have to do who have received their -- who received
11:47:24 22 their training abroad. He began another residency in the
11:47:28 23 United States. He undertook that residency at the Chicago
11:47:32 24 Medical School and completed it three years later.

11:47:36 25 Now, the day after he finished his residency in 1985,

11:47:40 1 he began working at a clinic on Chicago's South Side. He also
11:47:46 2 began working at Trinity Hospital, which is on the South Side.
11:47:50 3 And then at the address that you are going to hear a lot
11:47:52 4 about, at 642 East 79th Street, he began his own practice in
11:47:58 5 October of 2003.

11:47:58 6 Along the way he married a lovely lady, and he has
11:48:04 7 two children.

11:48:06 8 Now, what the prosecutor didn't tell you in opening
11:48:08 9 statement that I think is very important that you are going to
11:48:12 10 hear in this case is let's talk about the community that
11:48:16 11 Dr. Chhibber served. It is essential for your understanding
11:48:20 12 of this case. This community is bordered on Chicago's South
11:48:24 13 Side. It is a community called Chatham. You will hear from
11:48:30 14 my experts in this case that a study done last year,
11:48:36 15 February 11, 2011, by the University of Chicago alerts us to
11:48:40 16 the fact that the residents of Chicago's South Side, namely,
11:48:44 17 Chatham, have a critical need for quality healthcare. They
11:48:50 18 suffer in this community from disproportionate high rates of
11:48:56 19 both hypertension, diabetes, and asthma.

11:49:02 20 And, specifically, again, the study tells us that
11:49:06 21 Chatham of course has a population of 3,700 individuals. You
11:49:12 22 need to know because it's important for this case that 93.- --
11:49:16 23 97.3 percent of those people in Chatham are African-Americans.
11:49:22 24 Most live below the federal poverty level.

11:49:24 25 Now, with the exception of just one community in

11:49:30 1 Chicago, and that would be Woodlawn, Chatham has the highest
11:49:34 2 rate of deaths in the city of Chicago that result from
11:49:38 3 cardiovascular disease. Deaths in Chatham from cardiovascular
11:49:42 4 disease are twice the national average. In addition, the same
11:49:48 5 community has more deaths from cancer than any other community
11:49:52 6 in the city and, again, twice the national average.

11:49:56 7 Now, when Dr. Chhibber began his practice, he was
11:50:00 8 well aware that the patients that visit his clinic have
11:50:06 9 enormous serious deficiencies in the kind of medical care that
11:50:10 10 they have received. A great majority of his patients were all
11:50:16 11 elderly, they generally were afflicted with hypertension as
11:50:20 12 well as diabetes. The only time most of Dr. Chhibber's
11:50:26 13 patients ever saw a doctor was in the emergency room. It is
11:50:34 14 with this understanding that Dr. Chhibber geared his practice
11:50:36 15 to serve this unique group of individuals.

11:50:40 16 You have to remember the evidence is going to show
11:50:44 17 you that he is an internist in an environment where the only
11:50:48 18 way his patients get quality care is that he has to be the
11:50:54 19 kind of physician that treats the whole patient. When they
11:50:58 20 come in -- not just maybe for something that they voice, but
11:51:00 21 he's got to treat that entire patient. And in terms of in
11:51:10 22 this environment, you're going to hear, he has to be part
11:51:12 23 psychologist. He has to realize that many of us, and his
11:51:14 24 patients, like everybody else, going to the doctor, they don't
11:51:18 25 want to tell him everything that's wrong with them.

11:51:20 1 Dr. Chhibber is a throwback, you will hear, to when
11:51:24 2 doctors actually cared about you. He has been like a member
11:51:30 3 of the family to all of the people that he treated. And it is
11:51:34 4 true as a primary physician, he relies on the vital signs,
11:51:40 5 that when the patients come in, he frequently uses tests to
11:51:42 6 determine the patients' problems. But above all, he relies
11:51:48 7 upon his intuition and his experience with the population that
11:51:54 8 he is treating.

11:51:54 9 You will hear this because, yeah, you're going to
11:51:58 10 hear some tapes in this case. We will talk about those. He's
11:52:00 11 the kind of doctor, he can't stop talking. If you ask him any
11:52:06 12 questions, he will just answer anything for you. He never
11:52:08 13 tried to hide anything.

11:52:10 14 You will not hear in this case one patient that was
11:52:14 15 ever pressured into taking a test, and there will not be a
11:52:20 16 single instance where if a patient asked what this test is
11:52:26 17 for, that the doctor didn't willingly tell them what it was
11:52:28 18 for.

11:52:28 19 And let me tell you what else the evidence is going
11:52:32 20 to show in this case. You are not going to hear one patient
11:52:34 21 step into this courtroom and say that he does anything but
11:52:38 22 love this doctor.

11:52:42 23 Now, it is true, Dr. Chhibber, he worked
11:52:48 24 extraordinarily long hours. He worked in a couple of
11:52:52 25 hospitals, Trinity, St. Margaret's. He had the kind of

11:52:56 1 clientele that first in, first served. But I will tell you
11:53:00 2 what you are going to find. Yeah, he was late all right, but
11:53:02 3 those patients, not a single one would leave because they
11:53:06 4 loved him. They understood that by coming to him, he was
11:53:12 5 going to give them the best care that they could possibly
11:53:14 6 receive.

11:53:16 7 You're going to learn in the long run with this case,
11:53:20 8 that this case is going to be, it's going to be about patients
11:53:22 9 and not about charts.

11:53:24 10 Now, let's talk about this equipment that the
11:53:26 11 government alluded to. Yes, it is true, one of the very first
11:53:32 12 things that Dr. Chhibber became aware of was he decided to
11:53:36 13 make a huge investment in equipment. He realized that his
11:53:40 14 patients needed to have certain tests conducted. He knew that
11:53:44 15 it was useless to send these patients other places for these
11:53:50 16 tests to be conducted because, one, in this community, most
11:53:54 17 don't own cars, most of these people all use public
11:54:00 18 transportation. If he did anything other than treat them with
11:54:04 19 his own equipment, it would mean that they would not receive
11:54:06 20 the care that they needed.

11:54:10 21 Yes, it is true, some of the equipment that you are
11:54:12 22 going to hear about in this case are EKGs. As you will find
11:54:16 23 out, they register the electrical impulses of the heart.
11:54:20 24 Echocardiograms would give you a picture of the structure of
11:54:24 25 the heart. There are going to be -- it's called PFT cases

11:54:28 1 where you blow into a tube and they might show you some, some
11:54:32 2 defects in the lung, and maybe some abdominal ultrasounds that
11:54:38 3 will give you a structure of the liver, the stomach, and some
11:54:40 4 other things.

11:54:42 5 Now, this equipment in this day and age is very
11:54:46 6 uncomplicated equipment with respect to the kind of equipment
11:54:50 7 that most of you are used to, CAT scans, et cetera, and the
11:54:54 8 truth of the matter is that most of this equipment is
11:54:56 9 relatively inexpensive. And, yes, it is true, the evidence
11:55:02 10 will show that he was proactive in the use of this equipment
11:55:08 11 because he needed to see -- he needed to treat his specific
11:55:12 12 population.

11:55:12 13 Now, with respect to heart murmurs, let me tell you
11:55:16 14 what the evidence is really going to show about this. The
11:55:20 15 detection of heart murmurs in this case is significant. It is
11:55:24 16 indeed, as you're going to hear from experts, it can be an
11:55:28 17 indication of heart disease. The government maintains that
11:55:34 18 every time that he found a heart murmur, that his diagnosis
11:55:36 19 was false.

11:55:38 20 Now, much to the contrary, you're going to hear the
11:55:40 21 real evidence about heart murmurs. You're going to hear
11:55:44 22 experts tell you that heart murmurs are not permanent
11:55:48 23 conditions most of the time, that they are what they call
11:55:50 24 transitory conditions. Depending on the various patients,
11:55:54 25 they come and they go.

11:55:56 1 You're going to hear that the number one American
11:56:00 2 medical journal in the United States, the Journal of the
11:56:02 3 American Medical Association, has said that 20 to 50 percent
11:56:04 4 of Americans have had instances of heart murmurs. More such
11:56:10 5 murmurs, of course, would be expected in Chatham.

11:56:14 6 Now, what happens is because Dr. Chhibber knew about
11:56:18 7 this, unlike a doctor in Lake Forest, he becomes an expert in
11:56:24 8 diagnosing heart murmurs, which could definitely be a prelude
11:56:30 9 to your having heart disease. He would actually -- as
11:56:34 10 opposed, perhaps, to a doctor in Lake Forest, he would look
11:56:38 11 for instances of heart murmurs.

11:56:42 12 Now, doctors may differ on this point. What
11:56:46 13 Dr. Chhibber's practice was, if he found one, he didn't want
11:56:50 14 to alarm his patients with that. He would order -- he would
11:56:54 15 diagnose the murmur, perform the test, and then if something
11:56:58 16 was wrong when they returned, he would tell them what it was.

11:57:02 17 You will hear evidence in this case of how his talent
11:57:06 18 with these heart murmurs probably saved at least one of the
11:57:10 19 lives that you are going to hear about in this case.

11:57:12 20 Let me tell you also about this shortness of breath.
11:57:16 21 When a patient comes in, the doctor, while he checks for heart
11:57:20 22 murmurs, he definitely checks for shortness of breath. Now,
11:57:24 23 this is subjective. This is not something that the patient
11:57:26 24 has to complain about, but these are observations that a good
11:57:30 25 doctor makes.

11:57:32 1 Now, I've told you what I think the evidence is going
11:57:36 2 to show you a lot about Dr. Chhibber. Let me tell you what I
11:57:38 3 think the evidence is going to show you about the government's
11:57:40 4 case. The evidence is going to show you that this whole
11:57:46 5 government investigation was misguided from the outset. As
11:57:52 6 best we can see, this evidence was begun by an individual who
11:58:00 7 brought fraudulent information into the government for
11:58:02 8 purposes of securing financial gain for himself; that once the
11:58:08 9 government accepted these allegations without conducting their
11:58:12 10 own investigation into that, that the government's
11:58:18 11 investigation proceeded like a horse with blinders on.

11:58:22 12 Because the government's premise from the very
11:58:24 13 beginning was that Dr. Chhibber was guilty, it tainted each
11:58:30 14 and every aspect of their case.

11:58:34 15 Now, let's talk about these agents. You're going to
11:58:40 16 hear in this case that the government sent undercover agents
11:58:46 17 in to Dr. Chhibber's office. Now, the evidence will show that
11:58:50 18 the government's use of its undercover agents in this case
11:58:54 19 suffers from the same set of blinders that it did in
11:58:58 20 conducting all other aspects of this investigation.

11:59:02 21 In this case, the government recognized that in order
11:59:06 22 to send in undercover agents, they had to be African-Americans
11:59:12 23 because --

11:59:12 24 MR. HAMMERMAN: Objection, your Honor.

11:59:14 25 THE COURT: Overruled.

11:59:14 1 MR. JONES: This is an African-American community.
11:59:18 2 He couldn't send in Chinese. You have to find four
11:59:20 3 African-American agents to go in.

11:59:24 4 Now, the premise was that these four African-American
11:59:26 5 agents would be free of any kind of cardiovascular disease.
11:59:34 6 And you will hear that that is because if they were free from
11:59:36 7 cardiovascular disease and Dr. Chhibber diagnosed tests for
11:59:44 8 them, they'd come back to you, ladies and gentlemen of the
11:59:46 9 jury, and say, Hey, look, they were free of cardiovascular
11:59:54 10 disease.

11:59:56 11 But let me tell you what the evidence is really going
12:00:00 12 to show in this case. Because the government had blinders on,
12:00:02 13 they did not pre-screen these agents for cardiovascular
12:00:04 14 disease. They just brought them in. And guess what the
12:00:08 15 evidence is going to tell us?

12:00:08 16 MR. HAMMERMAN: Objection, your Honor.

12:00:10 17 THE COURT: Overruled.

12:00:10 18 MR. JONES: We will show that the African-American
12:00:16 19 agents were virtually to a man overweight, and they all
12:00:20 20 suffered from the same infirmities that the people -- the
12:00:22 21 population of Chatham did. You're going to hear that the
12:00:28 22 tests that Dr. Chhibber did on these agents showed that they
12:00:32 23 all had heart disease.

12:00:34 24 You know, I'm glad -- the prosecutor mentions Terrell
12:00:38 25 Cole as one of the undercover people. I can't wait for him to

12:00:40 1 testify. The evidence is going to show that Terrell Cole had
12:00:46 2 -- when the doctor sees the murmur, finds -- and he does the
12:00:50 3 EKG, there is a spike in his heart. That is uncontested.
12:00:54 4 Their own expert is going to tell you that it was an abnormal
12:00:58 5 EKG.

12:01:00 6 And with respect to the other two, you're going to
12:01:02 7 find out that they also had heart disease.

12:01:06 8 Now, the undercover tapes in this case, we absolutely
12:01:10 9 embrace them, as the evidence will show, because they show
12:01:14 10 that Dr. Chhibber is a loving professional. And I say
12:01:24 11 "embrace." There are only going to be two tapes because what
12:01:28 12 the evidence is going to show that they sent in -- they tell
12:01:30 13 us that two of the times that they went in, the tape recorder
12:01:34 14 didn't work, leaving us with no evidence of fraud.

12:01:40 15 Now, when I tell you that the evidence will show that
12:01:46 16 these -- the conduct of these agents is misguided, we are also
12:01:50 17 going to show you misconduct on behalf of these agents.

12:01:54 18 MR. HAMMERMAN: Objection, your Honor.

12:01:54 19 THE COURT: Overruled.

12:01:54 20 MR. JONES: And let me tell you what the misconduct
12:01:58 21 on behalf of these agents is that we are going to show you.
12:02:02 22 These -- a couple of these agents really wanted to get into an
12:02:08 23 undercover probe because it was a feather in their cap. So
12:02:12 24 what we're going to show you is that a couple of these agents
12:02:16 25 even lied to their fellow FBI agents about their true

12:02:20 1 cardiovascular disease. And then during the course of the
12:02:24 2 case where we start asking for their records and their records
12:02:28 3 come out and show that they really had cardiovascular disease
12:02:32 4 before they even go in to see Dr. Chhibber, they continue to
12:02:36 5 lie to cover up their misdeeds.

12:02:38 6 MR. HAMMERMAN: Objection, your Honor.

12:02:40 7 THE COURT: Overruled.

12:02:42 8 MR. JONES: Now, as far as patients in this case, we
12:02:52 9 expect, as the prosecutor says, that from 2007 to 2010, that
12:02:56 10 the government will attempt to introduce the testimony of four
12:03:00 11 patients that they allege will substantiate this case.

12:03:06 12 Well, the very first thing that we tell you that the
12:03:08 13 evidence is going to show, that during this period from 2007
12:03:12 14 to 2010, that the doctor treated over 3700 patients, and what
12:03:20 15 the government has done to attempt to make its case is scraped
12:03:24 16 up the bottom of the barrel to come up with four patients.
12:03:34 17 Nevertheless, we will show that the patients they bring in --
12:03:38 18 and, in fact, what else the evidence is going to show is that
12:03:40 19 in order to get these patients, they were interviewed by the
12:03:42 20 government years later, most of these patients are going to
12:03:46 21 tell you they couldn't remember a single detail about what
12:03:50 22 went on, but the government interviewed them and
12:03:54 23 re-interviewed them and re-interviewed them until they got a
12:03:56 24 story that they were satisfied with.

12:03:58 25 MR. HAMMERMAN: Objection, your Honor.

12:04:00 1 THE COURT: Overruled.

12:04:00 2 MR. JONES: We will show that the treatment they
12:04:04 3 received was reasonable and consistent with good health and
12:04:10 4 above all is not indicative of any kind of fraud.

12:04:14 5 For instance, one of the patients that you are going
12:04:16 6 to hear from in the next couple of days, she comes into
12:04:20 7 Dr. Chhibber's office, she's been treated in the emergency
12:04:22 8 room at one of the suburban hospitals, and she's been treated
12:04:28 9 the night before for a viral infection. And what happens is
12:04:32 10 that the doctor sees her the next day, and the doctor realizes
12:04:36 11 that this infection has spread and that this -- he believes
12:04:42 12 that it is the bacterial infection that is the most vicious of
12:04:46 13 all kinds, it's called MRSA, and that it's a flesh-eating
12:04:50 14 bacteria, and that immediately what the doctor does is he sees
12:04:54 15 the infection spread from the previous day, he gives her three
12:04:56 16 of the antibiotics, known ones that will kill this superbug,
12:05:02 17 and what he does, because he also knows that this MRSA will
12:05:08 18 affect the linings of the heart, he orders one of the tests
12:05:12 19 that the government complains of. That test probably saved
12:05:16 20 this woman's life.

12:05:22 21 Now, one thing about the patients. You heard about
12:05:32 22 the cost from the government. I will tell you what. The
12:05:36 23 total cost for all the patients in this indictment was -- the
12:05:40 24 total amount of money the doctor received was \$5,255.70.

12:05:48 25 Now, I want to spend just a moment about these former

12:05:52 1 employees that he says are going to testify.

12:05:54 2 Well, it is expected that the government will bring
12:05:58 3 these former employees in to attempt to sustain its burden
12:06:06 4 that Dr. Chhibber ordered tests sometimes before he saw the
12:06:10 5 patients at the clinic. Of course, keeping in mind that what
12:06:14 6 the evidence in this case is is not the fact of ordering tests
12:06:18 7 but whether the tests were normally ordered and billed to Blue
12:06:22 8 Cross/Blue Shield. That's the crime.

12:06:24 9 We will tell you that several of these employees that
12:06:32 10 the government is going to use have had nothing but improper
12:06:36 11 motivations, including being fired for legitimate purposes,
12:06:40 12 including the negligent handling of drugs in his own clinic.
12:06:44 13 But we will also tell you that, sure, there were occasions
12:06:46 14 where Dr. Chhibber was at Trinity or he was at St. Margaret
12:06:50 15 that he would talk to some of his employees, he would find out
12:06:54 16 what the vital signs were for the waiting patients, and if --
12:07:02 17 we will have expert testimony that if the vital signs included
12:07:04 18 their weight, their hypertension, there was nothing wrong for
12:07:08 19 him ordering an EKG for an echo.

12:07:10 20 You will also hear, yeah, sure, he would talk, and
12:07:14 21 then sometimes he would order a test for a patient where the
12:07:16 22 next visit said that the patient ought to receive the test.
12:07:22 23 And included among some of those would be patients, regular
12:07:24 24 patients, whose symptoms he well knew.

12:07:28 25 We will say to you, ladies and gentlemen, as I

12:07:32 1 conclude, we are convinced at the conclusion of this case that
12:07:38 2 you will find that Dr. Chhibber is not guilty of any criminal
12:07:42 3 acts, that there will be no proof that he somehow willfully
12:07:48 4 devised a scheme to defraud, and at the conclusion of the
12:07:52 5 evidence, we are going to ask you to do the single thing that
12:07:56 6 we believe that the evidence will dictate: Find him not
12:08:00 7 guilty.

12:08:02 8 Thank you.

12:08:02 9 THE COURT: Thank you.

12:08:04 10 Well, members of the jury, that's perfect timing
12:08:06 11 because it's time for lunch. We will take a one-hour lunch
12:08:12 12 break. We will resume at 1:00 o'clock. Have a good lunch,
12:08:16 13 and remember, don't discuss the case with anyone. Thank you.
12:08:52 14 (The trial was adjourned at 12:05 p.m. until 1:00 p.m. of
12:08:58 15 this same day and date.)

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IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA,)	Docket No. 11 CR 119
)	
Plaintiff,)	
)	
vs.)	
)	
JASWINDER RAI CHHIBBER,)	Chicago, Illinois
)	March 1, 2012
Defendant.)	1:00 o'clock p.m.

TRIAL TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE SUZANNE B. CONLON, AND A JURY
VOLUME 1-B

APPEARANCES:

For the Plaintiff:	HON. PATRICK FITZGERALD United States Attorney BY: MR. SAMUEL B. COLE MR. JOEL M. HAMMERMAN 219 S. Dearborn St., Suite 500 Chicago, Illinois 60604
For the Defendant:	PUGH, JONES & JOHNSON, P.C. BY: MR. WALTER JONES, JR. MR. JONATHAN B. CIFONELLI 180 North LaSalle Street, Suite 3400 Chicago, IL 60601 (312) 768-7800 LAW OFFICE OF ROBERT ORMAN BY: MR. ROBERT ORMAN One North LaSalle Street, Suite 1775 Chicago, IL 60602 (312) 372-0515
Court Reporter:	MS. CAROLYN R. COX, CSR, RPR, CRR, FCRR Official Court Reporter 219 S. Dearborn Street, Suite 1854-B Chicago, Illinois 60604 (312) 435-5639

1 (The following proceedings were had in open court in the
01:04:16 2 presence and hearing of the jury:)

01:04:16 3 THE COURT: Good afternoon, members of the jury.
01:04:18 4 Please be seated.

01:04:28 5 Would the government call its first witness.

01:04:32 6 MR. COLE: Yes, your Honor. The government calls
01:04:36 7 Tiffany Shirley-Terrell to the stand.

01:05:06 8 (Witness sworn.)

01:05:06 9 THE COURT: Would you tell us your full name and
01:05:08 10 spell your last name.

01:05:14 11 THE WITNESS: Tiffany Shirley-Terrell, T-i-f-f-a-n-y,
01:05:20 12 S-h-i-r-l-e-y, hyphen, Terrell, T-e-r-r-e-l-l.

01:05:26 13 - - -

01:05:26 14 TIFFANY SHIRLEY-TERRELL, DIRECT EXAMINATION

01:05:26 15 BY MR. COLE:

01:05:28 16 Q. Ms. Shirley-Terrell, where do you work?

01:05:30 17 A. I am currently a stay-at-home mom.

01:05:34 18 Q. How long have you been a stay-at-home mom?

01:05:36 19 A. Since October.

01:05:38 20 Q. What did you do prior to that time?

01:05:40 21 A. I worked at National Motive Diesel (phonetic). I was a
01:05:48 22 production associate.

01:05:54 23 Q. How long did you have that job?

01:06:00 24 A. I was there from March until October 20th.

01:06:02 25 Q. Of which year?

01:06:04 1 A. 2011.

01:06:06 2 Q. Why did you leave that job?

01:06:08 3 A. I left the job because they switched my hours from 6:00 in

01:06:14 4 the morning until 2:30 in the afternoon to 3:00 in the

01:06:20 5 morning.

01:06:20 6 Q. Are you married, Ms. Shirley-Terrell?

01:06:22 7 A. Yes.

01:06:22 8 Q. How long have you been married for?

01:06:24 9 A. Seven years.

01:06:26 10 Q. Do you have any kids?

01:06:26 11 A. Yes.

01:06:26 12 Q. How many kids?

01:06:26 13 A. Two.

01:06:28 14 Q. How old are they?

01:06:28 15 A. Three and five.

01:06:28 16 Q. Can you describe for the jury your educational background.

01:06:32 17 A. I went to college. I went to Central State University,

01:06:36 18 which is in River Forest, Ohio. I graduated with a bachelor's

01:06:42 19 in performing arts.

01:06:42 20 Q. Any other education after you graduated college?

01:06:48 21 A. Yes. I went to Illinois School of Health Careers. I was

01:06:54 22 taking a medical assistant (sic).

01:06:56 23 Q. And approximately when was that?

01:06:58 24 A. That was in 2009.

01:07:00 25 Q. Did you earn any degrees or certificates from that

01:07:04 1 education?

01:07:06 2 A. No.

01:07:06 3 Q. Now, when you were at the Illinois School of Health

01:07:10 4 Careers, they require you to take a physical exam?

01:07:12 5 A. Yes.

01:07:12 6 Q. Can you explain to the jury why that was.

01:07:12 7 A. We have to take a physical exam to let you know your

01:07:16 8 history because we will be doing injections on each other,

01:07:20 9 clinicals, so you have to take the whole physical, like you go

01:07:26 10 see the doctor, you go in and you get your complete physical

01:07:30 11 done, your blood pressure, your heart rate, temperature,

01:07:32 12 things of that nature.

01:07:32 13 Q. And who did you see for your physical exam?

01:07:34 14 A. Dr. Chhibber.

01:07:36 15 Q. Now, when you went to see Dr. Chhibber for your physical,

01:07:40 16 what health problems were you worried about at that time?

01:07:42 17 A. I wasn't worried about any problems.

01:07:44 18 Q. Now, how did you come to see the defendant, Dr. Chhibber?

01:07:48 19 A. Well, I had a friend of mine that referred me to

01:07:52 20 Dr. Chhibber.

01:07:54 21 Q. And is this clinic near where you live?

01:07:56 22 A. Yes.

01:07:56 23 Q. And how did you make an appointment with the defendant?

01:08:02 24 A. I went up there after school one day and explained to him

01:08:06 25 that I needed a physical done for school.

01:08:10 1 Q. And did you go see -- get the physical that day, or was it
01:08:14 2 for a different day?
01:08:14 3 A. No, it was later on, at a later date.
01:08:16 4 Q. So did you eventually then go see the defendant for a
01:08:22 5 physical?
01:08:22 6 A. Yes.
01:08:22 7 Q. Who went with you?
01:08:24 8 A. My husband went with me.
01:08:26 9 Q. Approximately when was this?
01:08:28 10 A. Like what day?
01:08:34 11 Q. Yeah, what month, what year?
01:08:36 12 A. It was in 2009.
01:08:38 13 Q. Was it in the spring of 2009?
01:08:40 14 A. Yes.
01:08:40 15 Q. Did you bring anything with you when you went to the exam?
01:08:46 16 A. Yes, I brought my physical form that the school had
01:08:48 17 provided for me to take.
01:08:50 18 Q. Bring an insurance card too?
01:08:52 19 A. Yes.
01:08:52 20 Q. A driver's license?
01:08:52 21 A. Yes.
01:08:54 22 Q. Now, can you tell the jury what happened when you first
01:08:58 23 went into the defendant's clinic.
01:08:58 24 A. When I first went in, you know, you have to go to the
01:09:04 25 window, and you explain to them you have an appointment, and

01:09:06 1 they give you a clipboard with things to fill out on it, your
01:09:12 2 medical history, and they ask for your ID and your medical
01:09:16 3 card.

01:09:18 4 MR. COLE: Your Honor, may I approach the witness?

01:09:20 5 THE COURT: There is no need to ask. Go ahead.

01:09:22 6 BY MR. COLE:

01:09:22 7 Q. I am going to show you what's marked as Government Exhibit
01:09:26 8 340. Please take a look through that.

01:10:26 9 Does that look to be the patient chart for your visit
01:10:28 10 with the defendant?

01:10:30 11 A. Can you repeat that?

01:10:32 12 Q. Sure. That would be the chart for your visit, your
01:10:32 13 patient chart, correct?

01:10:38 14 A. Yes.

01:10:38 15 Q. Your name is on that chart?

01:10:38 16 A. Yes.

01:10:38 17 Q. Does it have some of the paperwork you filled out when you
01:10:42 18 saw the defendant?

01:10:44 19 A. Yes.

01:10:44 20 Q. Your signature appears on several of documents in that
01:10:50 21 chart; is that correct?

01:10:52 22 A. Yes.

01:10:52 23 Q. And on the right side, there is a progress note dated
01:10:54 24 March 4, 2009. Do you see that?

01:10:56 25 A. Yes.

01:10:56 1 Q. Is that approximately the date you saw the defendant?

01:10:58 2 A. Yes.

01:11:00 3 MR. COLE: Your Honor, the government moves to admit
01:11:02 4 Government Exhibit 340.

01:11:02 5 MR. JONES: We have no objection, Judge.

01:11:04 6 THE COURT: All right. The exhibit is admitted.

01:11:06 7 (Above-mentioned exhibit was received in evidence.)

01:11:08 8 BY MR. COLE:

01:11:10 9 Q. Turning your attention to Government Exhibit 340, page 19.

01:11:12 10 MR. COLE: Your Honor, may I publish this to the jury
01:11:14 11 on the screen?

01:11:16 12 THE COURT: Yes.

01:11:18 13 BY MR. COLE:

01:11:24 14 Q. Do you recognize this form?

01:11:26 15 A. Yes.

01:11:26 16 Q. What is that?

01:11:28 17 A. That's the medical form from his clinic that you fill out
01:11:36 18 with your information.

01:11:36 19 Q. And you filled out that form when you first arrived at the
01:11:40 20 clinic; is that right?

01:11:40 21 A. Yes.

01:11:40 22 Q. Is that your signature at the bottom?

01:11:42 23 A. Yes.

01:11:42 24 Q. Now, let me direct your attention to Government Exhibit
01:11:46 25 340, page 21. Do you recognize that form?

01:11:52 1 A. Yes.

01:11:52 2 Q. Is that your signature at the bottom?

01:11:54 3 A. Yes.

01:11:56 4 Q. And when did you sign that form?

01:12:00 5 A. On March 4.

01:12:02 6 Q. And is this one of the forms you filled out when you first
01:12:06 7 arrived at the clinic?

01:12:06 8 A. Yes.

01:12:06 9 Q. Now, I want to direct your attention to the very top
01:12:10 10 paragraph of that form. Could you please read that for the
01:12:16 11 jury.

01:12:16 12 A. It says, Consent for diagnosis and treatment. I authorize
01:12:22 13 the above doctor to perform the treatment/procedures described
01:12:26 14 below --

01:12:26 15 THE COURT: All right. The document is in evidence.
01:12:28 16 We are not going to read from 800 exhibits.

01:12:32 17 MR. COLE: That's fine.

01:12:32 18 BY MR. COLE:

01:12:36 19 Q. So I see there's nothing checked on this form; is that
01:12:40 20 right?

01:12:40 21 A. Correct.

01:12:40 22 Q. Did -- prior to signing this form, did anyone explain to
01:12:48 23 you any of these medical procedures?

01:12:50 24 A. No.

01:12:52 25 Q. So they asked you to sign this form that was blank,

01:12:54 1 essentially; is that correct?

01:12:56 2 A. Correct.

01:12:56 3 Q. Now, when you went to see the defendant, did you have any
01:13:04 4 insurance?

01:13:04 5 A. Yes.

01:13:04 6 Q. Can you describe that insurance for the jury, please.

01:13:06 7 A. I had Blue Cross/Blue Shield PPO.

01:13:10 8 Q. And how did you have that insurance?

01:13:12 9 A. Through my husband's job.

01:13:14 10 Q. Where did your husband work?

01:13:20 11 A. Metro Motors.

01:13:20 12 Q. Let me show you what's been marked as Government Exhibit
01:13:24 13 340, page 17. Is this a copy of your insurance card?

01:13:28 14 A. Yes.

01:13:28 15 Q. And this is what was in the chart, correct, in front of
01:13:34 16 you?

01:13:34 17 A. Yes.

01:13:34 18 Q. And that was the card you gave to the defendant that day?

01:13:36 19 A. Yes.

01:13:36 20 Q. Now, after you filled out the paperwork and gave your
01:13:42 21 insurance card, tell the jury what happened next.

01:13:46 22 A. I filled out the paperwork, gave my insurance card, and I
01:13:50 23 had to wait until the medical assistant would come to get me
01:13:56 24 to go back and do vitals.

01:13:56 25 Q. Approximately how long did you wait?

01:13:58 1 A. It was like a long time. Maybe about 30 minutes.

01:14:10 2 Q. And can you describe for the jury the vitals that were
01:14:16 3 taken?

01:14:16 4 A. Yes. I had my weight, height, temperature, blood
01:14:24 5 pressure.

01:14:28 6 Q. Now, was your husband with you the entire visit?

01:14:34 7 A. Yes.

01:14:34 8 Q. Then at some point, did he have to leave early?

01:14:36 9 A. Yes.

01:14:36 10 Q. Can you describe that for the jury.

01:14:38 11 A. My husband had to leave. I was there a really long time,
01:14:44 12 so my husband had to leave to go pick the kids up at day care
01:14:48 13 when day care lets out at 6:30, so you have to get there
01:14:52 14 before 6:30.

01:14:52 15 Q. Do you remember approximately what time you arrived at the
01:14:56 16 clinic?

01:14:56 17 A. Yes, 3:30, 4:00 o'clock.

01:14:58 18 Q. So after you had your vitals taken, what happened next?

01:15:00 19 A. After I had my vitals taken, I sat there until the medical
01:15:06 20 assistant went to go and let Dr. Chhibber know that I was
01:15:12 21 ready to be seen by him. And I sat and waited. He was in the
01:15:14 22 room with another patient. And once he got done with the
01:15:18 23 patient, then I went in to be seen.

01:15:20 24 Q. Now, I want you to describe for the jury exactly what
01:15:24 25 happened to you during your examination by the defendant.

01:15:26 1 What happened first?

01:15:28 2 A. When I first went in, I sat on the table, and Dr. Chhibber
01:15:34 3 came in, and he asked me my medical history, and I explained
01:15:38 4 to him my medical history.

01:15:40 5 Q. What did you tell him?

01:15:42 6 A. I told Dr. Chhibber -- he asked me if I had any kids or
01:15:50 7 about pregnancies. I said, Yes, I had two kids. He asked me
01:15:54 8 if I had any surgeries. I told him I had two Cesarian
01:15:58 9 sections, and I told him when I was pregnant with my five year
01:16:02 10 old, that I was suffering from shortness of breath, and with
01:16:06 11 my three year old, I suffered from migraines with my three
01:16:12 12 year old.

01:16:12 13 Q. And did you tell him whether -- what those conditions you
01:16:16 14 suffered from after your pregnancies?

01:16:18 15 A. Can you repeat that?

01:16:20 16 Q. Sure. You said you told him that you had two surgeries,
01:16:22 17 right?

01:16:24 18 A. Correct.

01:16:24 19 Q. And that you were suffering from shortness of breath
01:16:26 20 during your pregnancy; is that correct?

01:16:28 21 A. Correct.

01:16:28 22 Q. What did you tell him about any medical conditions that
01:16:30 23 you had at that time?

01:16:30 24 A. I didn't have any medical conditions at that time.

01:16:32 25 Q. How long had it been since you suffered from -- did you

01:16:36 1 have asthma during your pregnancy?

01:16:40 2 A. With my five year old, yes.

01:16:40 3 Q. That was how many years before you had seen the defendant?

01:16:44 4 A. Like two.

01:16:44 5 Q. And did you tell him whether or not you had any asthma
01:16:50 6 problems or shortness of breath since your pregnancies?

01:16:54 7 A. No.

01:16:54 8 Q. What did you tell him about that?

01:16:54 9 A. I explained to him that I didn't have any problems as of
01:17:00 10 that day or since I had my pregnancy. I was just explaining
01:17:04 11 to him the problems that I had when I was pregnant.

01:17:06 12 Q. When was the last time you had an asthma issue?

01:17:10 13 A. Like five years ago when I was pregnant.

01:17:16 14 Q. Now, after the birth of your second child up to when you
01:17:22 15 saw the defendant, had you had any problems with migraines?

01:17:26 16 A. No.

01:17:26 17 Q. Now, you have had some migraines recently or more
01:17:30 18 recently; is that correct?

01:17:30 19 A. Yes, correct.

01:17:30 20 Q. But when you saw the defendant in March of 2009, you
01:17:34 21 weren't suffering from migraines; is that correct?

01:17:38 22 A. Right.

01:17:38 23 Q. Can you describe the actual physical examination that the
01:17:40 24 defendant gave you.

01:17:42 25 A. I sat on the table, and he listened to my heart rate, and

01:17:52 1 he felt on my neck to see my thyroid. He told me that he felt
01:18:02 2 that one of my thyroids may be enlarged or he'd look further
01:18:06 3 into it. And then I made a joke like, I guess that's why I
01:18:12 4 can't lose weight after I had my kids.
01:18:12 5 Q. Now, when he listened to your heart, how did he do that?
01:18:16 6 A. He used a stethoscope.
01:18:20 7 Q. What position were you in?
01:18:22 8 A. I was sitting.
01:18:22 9 Q. Now, did he have you change positions at all during that
01:18:28 10 examination listening to your heart?
01:18:30 11 A. No.
01:18:30 12 Q. Did he have you squat down on the floor?
01:18:34 13 A. No.
01:18:34 14 Q. Or lay down?
01:18:36 15 A. No.
01:18:36 16 Q. How long did he take listening to your heart,
01:18:38 17 approximately?
01:18:38 18 A. Not that long, maybe -- listen, minutes, but not long.
01:18:50 19 Q. Now, you mentioned he said something about your thyroid.
01:18:54 20 What other medical problems did he mention to you?
01:18:56 21 A. That was all.
01:19:00 22 Q. Did he mention anything about your heart?
01:19:02 23 A. No.
01:19:02 24 Q. About your breathing?
01:19:06 25 A. No.

01:19:06 1 Q. Now, did the defendant tell you that he wanted to give you
01:19:08 2 any tests?
01:19:10 3 A. After he said my thyroid that was swollen, he said he
01:19:20 4 wanted to do an ultrasound test.
01:19:24 5 Q. Did he explain that he was going to do any additional
01:19:28 6 tests other than the ultrasound test?
01:19:30 7 A. No.
01:19:30 8 Q. Did he say anything about needing tests at your age?
01:19:34 9 A. Yes.
01:19:34 10 Q. When did he say that?
01:19:36 11 A. I asked him, Why do I have to have the test done, and he
01:19:42 12 told me because of my age.
01:19:44 13 Q. How old were you at the time?
01:19:46 14 A. Twenty-eight.
01:19:48 15 Q. And looking at the right side of the form, the patient
01:19:50 16 progress report, it's Government Exhibit 340, page 23. Now,
01:19:58 17 if you look at the middle right section of the form, if we
01:20:02 18 could blow that up, please.
01:20:04 19 So did he tell you -- at the very top, do you see it
01:20:12 20 says, TB skin test?
01:20:14 21 A. Yes.
01:20:14 22 Q. Did you know you were going to get a TB skin test?
01:20:18 23 A. Yes, I needed that for school.
01:20:20 24 Q. Below that it says -- it looks like, Diabetes profile. Do
01:20:24 25 you see that?

01:20:24 1 A. Um-hmm.

01:20:24 2 Q. Did he mention that to you?

01:20:26 3 A. No.

01:20:26 4 Q. Below that, it says, Hepatitis A, B, C profile. Did he
01:20:32 5 mention that to you?

01:20:34 6 A. No.

01:20:34 7 Q. Below that, do you see it says, Echo?

01:20:36 8 A. Yes, I see.

01:20:38 9 Q. Did he mention he was going to do an echocardiogram of
01:20:42 10 your heart?

01:20:42 11 A. No.

01:20:44 12 Q. What about below that, it looks like something like,
01:20:46 13 Carotid. Do you see that?

01:20:48 14 A. Yes.

01:20:48 15 Q. Did he mention he was going to do an ultrasound of your
01:20:52 16 carotid arteries?

01:20:54 17 A. No.

01:20:54 18 Q. And below that, it says, EKG. Do you see that?

01:20:58 19 A. Yes.

01:20:58 20 Q. And below that, PFT? Do you see that?

01:21:00 21 A. Yes.

01:21:00 22 Q. Did he tell you that he wanted you to have an EKG or PFT
01:21:06 23 test?

01:21:06 24 A. No.

01:21:06 25 Q. Did he explain what these tests were?

01:21:06 1 A. No.

01:21:06 2 Q. Did he explain why you needed them?

01:21:08 3 A. Because of my age.

01:21:12 4 Q. Now, let me back out of here and show you the bottom left

01:21:16 5 of that same progress note, the whole bottom part of it. Do

01:21:18 6 you see in the diagnosis section, it says 1 and it's circled?

01:21:22 7 A. Yes.

01:21:22 8 Q. Heart murmur. Did the defendant tell you that you had a

01:21:26 9 heart murmur?

01:21:26 10 A. No.

01:21:26 11 Q. Did he tell you there was anything weird about the sound

01:21:30 12 of your heart?

01:21:30 13 A. No.

01:21:30 14 Q. Mention anything about your heart at all?

01:21:32 15 A. No.

01:21:32 16 Q. Below that, it says, Chest pain. Did you tell the

01:21:36 17 defendant that you were suffering from chest pain?

01:21:40 18 A. No.

01:21:40 19 Q. Did the defendant tell you that it looked like you were

01:21:42 20 suffering from chest pain?

01:21:44 21 A. No.

01:21:44 22 Q. Did you put your hand over your chest a couple times

01:21:48 23 during the visit?

01:21:48 24 A. No.

01:21:48 25 Q. Below that, it says -- do you see that it says, Carotid

01:21:56 1 bruit number 3?

01:21:56 2 A. Yes.

01:21:56 3 Q. Did the defendant ever say anything to you about the

01:22:00 4 problem with the sound of blood in your carotid artery?

01:22:06 5 A. No.

01:22:06 6 Q. Did he mention to you that he was concerned about a higher

01:22:08 7 risk of a stroke?

01:22:10 8 A. No.

01:22:10 9 Q. Would you remember that if he said that?

01:22:12 10 A. Yes.

01:22:12 11 Q. Below that, do you see No. 4, it says, Dizziness? Did you

01:22:16 12 complain to the defendant that you had been dizzy?

01:22:18 13 A. No.

01:22:18 14 Q. Did you fall and trip when you went to see the defendant

01:22:22 15 in his office?

01:22:22 16 A. No.

01:22:22 17 Q. Is there anything you could possibly think of that you did

01:22:26 18 to give the defendant the impression that you were suffering

01:22:28 19 from dizziness?

01:22:28 20 A. No.

01:22:30 21 Q. No. 5, Chest pain. It's the same as No. 2. Did you say

01:22:36 22 that you had chest pain two different times?

01:22:38 23 A. No.

01:22:38 24 Q. Do you see below that, number 6, SOB, shortness of breath.

01:22:44 25 Did you tell the defendant you were suffering from shortness

01:22:46 1 of breath?

01:22:46 2 A. No.

01:22:48 3 Q. Did he tell you that, Boy, you look like you're winded?

01:22:52 4 A. No.

01:22:52 5 Q. Did he ask you if you had been running?

01:22:56 6 A. No.

01:22:56 7 Q. Did you walk to his clinic that day?

01:22:58 8 A. No.

01:22:58 9 Q. How did you get to his clinic?

01:23:00 10 A. I drove.

01:23:00 11 Q. You have a car?

01:23:00 12 A. Yes.

01:23:00 13 Q. Did you tell him that you had -- other than the shortness

01:23:06 14 of breath that we talked about during your pregnancy several

01:23:12 15 years before, did you tell him that you ever suffered from any

01:23:14 16 of these symptoms?

01:23:16 17 A. No.

01:23:16 18 Q. Did he ask you if you had ever been treated for a heart

01:23:18 19 murmur before?

01:23:20 20 A. No.

01:23:20 21 Q. Did he ask you if you had ever been tested for a heart

01:23:24 22 murmur?

01:23:24 23 A. No.

01:23:24 24 Q. Any tests run because someone was concerned about a heart

01:23:28 25 murmur?

01:23:28 1 A. No.

01:23:28 2 Q. Now, when you had your pregnancies, did you get treated by

01:23:34 3 a physician?

01:23:34 4 A. Yes.

01:23:34 5 Q. What kind of doctor?

01:23:36 6 A. OB/GYN.

01:23:38 7 Q. And did you see the OB regularly?

01:23:40 8 A. Yes.

01:23:40 9 Q. After these two pregnancies, were you concerned that you

01:23:44 10 had a heart murmur?

01:23:44 11 A. No.

01:23:44 12 Q. Were any of these things discussed at all during your

01:23:54 13 visit with the defendant?

01:23:54 14 A. No.

01:23:54 15 Q. Now, did the defendant tell you he was writing, Heart

01:24:00 16 murmur, chest pain, carotid bruit, dizziness, chest pain, and

01:24:04 17 shortness of breath, and he was writing these in your medical

01:24:08 18 chart?

01:24:08 19 A. No.

01:24:08 20 Q. Now, do you recall getting an ultrasound of your heart

01:24:14 21 that day?

01:24:14 22 A. Yes.

01:24:14 23 Q. And how about of the neck area?

01:24:16 24 A. Yes.

01:24:18 25 Q. Do you remember who administered the ultrasound?

01:24:20 1 A. Oharad, Orahad (phonetic), something.

01:24:24 2 Q. How do you remember his name?

01:24:24 3 A. Because I asked him his name, and I told him it sounded --

01:24:28 4 it was different.

01:24:30 5 Q. Do you recall getting an EKG?

01:24:34 6 A. Yes.

01:24:34 7 Q. Now, were you sitting up or lying down for the EKG?

01:24:38 8 A. I was sitting up.

01:24:38 9 Q. Who administered it?

01:24:40 10 A. The medical assistant.

01:24:42 11 Q. Do you remember what the medical assistant looked like?

01:24:44 12 A. Yes.

01:24:44 13 Q. Can you describe that for the jury.

01:24:44 14 A. She was an African-American female about five-five,

01:24:50 15 five-six, she had braids in her hair, she was nicely shaped.

01:25:02 16 That's about all.

01:25:02 17 Q. What was her build?

01:25:04 18 A. Her build was she was slimmer, like hourglass.

01:25:12 19 Q. And do you recall getting a test where you have to blow

01:25:16 20 into a tube?

01:25:16 21 A. Yes.

01:25:18 22 Q. Who administered that test?

01:25:18 23 A. The medical assistant.

01:25:20 24 Q. The same one you just described?

01:25:22 25 A. Yes.

01:25:22 1 Q. Now, if you go back and look at the tests, did you that
01:25:34 2 day get the results of any of these tests?

01:25:36 3 A. No.

01:25:36 4 Q. In fact, to this day, other than the TB test, have you
01:25:42 5 gotten the results of any of those exams?

01:25:44 6 A. No.

01:25:44 7 Q. Can you describe for the jury what happened when you were
01:25:48 8 finished with all these tests.

01:25:50 9 A. After I was finished with all those tests, I went back to
01:25:54 10 the waiting area -- well, no, actually, I'm sorry.

01:26:00 11 When I finished the test, I was going to get my coat,
01:26:02 12 I was on my way out the door to go home, and then I remembered
01:26:08 13 that I didn't get my sheet I needed filled out for school, my
01:26:10 14 physical form, so I went back in to get my physical form.

01:26:14 15 Q. So you went back in to get the physical form. Tell the
01:26:16 16 jury what happened.

01:26:16 17 A. I went in, I went back to the desk, and I explained to the
01:26:20 18 receptionist at the desk that I didn't get my form that I
01:26:26 19 needed for the school. And she called Dr. Chhibber, and he
01:26:28 20 came and filled out the form and gave it to her, and she gave
01:26:32 21 it to me.

01:26:32 22 Q. Did you watch the defendant fill out that form?

01:26:36 23 A. Yes.

01:26:36 24 Q. Where were you in relation to the defendant?

01:26:38 25 A. I was standing -- like there was a door here, this is the

01:26:42 1 glass, this is the door. The door was open, he was standing
01:26:46 2 -- she called him, he came out of one of the rooms, and he was
01:26:50 3 standing right and just filled it out on the wall, you know.
01:26:56 4 She was standing there, I was standing on the outside of the
01:26:58 5 door, she was behind the glass, and he filled it out, he
01:27:02 6 passed it to her, and she passed it to me.

01:27:04 7 Q. Approximately how long a time a gap had there been between
01:27:10 8 when you finished these tests and when the defendant filled
01:27:12 9 out that form?

01:27:12 10 A. It wasn't that long because, like I stated, I was on my
01:27:20 11 way out the door, and I realized that I didn't get my form.

01:27:24 12 Q. Let me show you what's marked as Government Exhibit 348,
01:27:30 13 8. Do you recognize that form?

01:27:38 14 A. Yes.

01:27:38 15 Q. At the top, it says, Physical examination?

01:27:40 16 A. Yes.

01:27:40 17 Q. Is this the physical examination form you got from your
01:27:44 18 school?

01:27:44 19 A. Yes.

01:27:44 20 Q. And you saw the defendant fill out this form; is that
01:27:52 21 correct?

01:27:52 22 A. Yes. Correct.

01:27:54 23 Q. Now, when he filled out the form, did he make any comments
01:27:58 24 to you about the results of your tests?

01:28:00 25 A. No.

01:28:00 1 Q. Now, you see under the top, it says, General appearance?

01:28:06 2 A. Yes.

01:28:06 3 Q. It says -- what does that say?

01:28:08 4 A. Good.

01:28:08 5 Q. And under findings section --

01:28:12 6 THE COURT: Again, I am going to admonish you about
01:28:14 7 reading documents in evidence. You are displaying them to the
01:28:18 8 jury. You don't have to read it to them.

01:28:20 9 BY MR. COLE:

01:28:20 10 Q. There is nothing on this form that says, Heart murmur, is
01:28:24 11 there?

01:28:24 12 A. No.

01:28:24 13 Q. Nothing that says dizziness, right?

01:28:26 14 A. No.

01:28:26 15 Q. Shortness of breath?

01:28:28 16 A. No.

01:28:28 17 Q. Chest pain?

01:28:30 18 A. No.

01:28:30 19 Q. It says, Good, right?

01:28:32 20 A. Correct.

01:28:32 21 Q. Now, did you pay any money for these tests that you
01:28:36 22 received from the defendant?

01:28:36 23 A. No.

01:28:36 24 Q. Did he collect a copay?

01:28:38 25 A. No.

01:28:38 1 Q. Co-insurance?

01:28:40 2 A. No.

01:28:40 3 Q. Ever get a bill?

01:28:42 4 A. No.

01:28:48 5 MR. COLE: No further questions, your Honor.

01:28:50 6 THE COURT: Cross-examination.

01:28:52 7 MR. JONES: Yes, your Honor.

01:29:22 8 - - -

01:29:22 9 TIFFANY SHIRLEY-TERRELL, CROSS-EXAMINATION

01:29:22 10 BY MR. JONES:

01:30:08 11 Q. Good afternoon, Ms. Terrell.

01:30:12 12 A. Good afternoon.

01:30:12 13 Q. Ms. Terrell, I gather that the government first approached
01:30:18 14 you about this case, oh, in September of 2011; is that
01:30:26 15 correct?

01:30:26 16 A. Correct.

01:30:26 17 Q. And this was about a visit that had taken place in '09; is
01:30:36 18 that correct?

01:30:36 19 A. Can you repeat that?

01:30:38 20 Q. Yes. What they approached you about was your visit that
01:30:40 21 took place in March of 2009; is that correct?

01:30:44 22 A. Correct.

01:30:44 23 Q. So it had been two years since the time you had this visit
01:30:48 24 at Dr. Chhibber's office; is that correct?

01:30:52 25 A. Right.

01:30:52 1 Q. And during -- do you know, ma'am, during the last six
01:30:58 2 years how many doctors' visits that you've had?

01:31:02 3 A. No, I don't.

01:31:06 4 Q. I'm sorry?

01:31:06 5 A. You said how many did I have?

01:31:08 6 Q. Yes. In the last six years, ma'am, how many doctors'
01:31:12 7 visits do you think you have had?

01:31:14 8 A. I'm not sure.

01:31:14 9 Q. Well, you've had quite a few, haven't you, even going back
01:31:20 10 to visiting Trinity's emergency room going back to 2005; isn't
01:31:20 11 that correct?

01:31:28 12 A. I'm not sure.

01:31:28 13 Q. And even this last job you had, you said you were there
01:31:36 14 from March to October; is that correct?

01:31:40 15 A. That's correct.

01:31:40 16 Q. Do you recall that even during that short period of time,
01:31:44 17 you had approximately seven visits to a doctor? Do you recall
01:31:46 18 that?

01:31:46 19 A. I'm not sure.

01:31:50 20 Q. All right. And one of the things that happened is that
01:31:56 21 during that time that even this last job you had, you had --
01:32:02 22 your physical condition had deteriorated to some extent
01:32:06 23 because you began to have the migraines again; is that
01:32:08 24 correct?

01:32:08 25 A. Correct.

01:32:08 1 Q. All right. Now, I want to ask you that we talked about
01:32:18 2 this asthma thing. Do you recall, for instance, that you
01:32:26 3 thought -- I believe you said that you thought that the last
01:32:30 4 time that you had had some form of attack of asthma before you
01:32:36 5 had gone to see Dr. Chhibber was five years before you saw
01:32:40 6 him?

01:32:42 7 A. Can you repeat that?

01:32:44 8 Q. Well, when do you think it was that you had your last
01:32:48 9 asthma attack before you saw Dr. Chhibber?

01:32:52 10 A. The last time I stated. I had my asthma attack when I was
01:32:58 11 pregnant.

01:32:58 12 Q. And what year was that, ma'am?

01:33:00 13 A. My son was born in '06, so it was before '06.

01:33:06 14 Q. Well, obviously, you do not remember that --

01:33:16 15 MR. COLE: Objection, your Honor.

01:33:18 16 THE COURT: I haven't heard the question yet.

01:33:20 17 Could you turn the light off on the screen?

01:33:30 18 BY MR. JONES:

01:33:42 19 Q. Do you recall on May 22nd, 2007, that you had an emergency
01:33:50 20 visit regarding your asthma to Trinity Hospital?

01:33:56 21 A. No, I don't.

01:33:56 22 Q. All right. I'm going to show you what's marked Exhibit 1
01:34:44 23 for this day. This purports to be an emergency room visit for
01:34:48 24 you regarding your asthma on May 22nd, 2007.

01:34:52 25 MR. COLE: Objection, your Honor. It's hearsay.

01:34:54 1 THE COURT: Overruled. Foundation.

01:34:56 2 BY MR. JONES:

01:34:56 3 Q. Do you now recall that emergency room visit to Trinity
01:35:00 4 Hospital?

01:35:00 5 A. No.

01:35:00 6 Q. Well, let me ask you this.

01:35:04 7 And, incidentally, that person, that's your name on
01:35:12 8 this exhibit; isn't that correct?

01:35:14 9 A. Correct.

01:35:14 10 Q. It's got your vitals on this, it's got your address and
01:35:20 11 all of that; isn't that correct?

01:35:28 12 A. I don't see the address.

01:35:28 13 Q. Well, do you see other things that indicate that that's
01:35:34 14 you?

01:35:34 15 A. Besides my name, no.

01:35:40 16 Q. Now, let me ask you this. Did you -- when you were having
01:35:48 17 your asthma attacks, you had -- you used an inhaler, did you
01:35:54 18 not?

01:35:54 19 A. Yes.

01:35:54 20 Q. And you used albuterol, did you not?

01:35:58 21 A. Yes.

01:36:00 22 Q. And do you recall at that time that your primary care
01:36:10 23 physician was a Mr. Charles Austin?

01:36:12 24 A. No.

01:36:14 25 Q. Did you live at the time at 8020 South Maryland?

01:36:34 1 A. Correct.

01:36:34 2 Q. Here, if I might approach you, this might help refresh
01:36:40 3 your recollection. Take a look at that part of the emergency
01:36:42 4 room record. Is that you, ma'am?

01:36:46 5 A. Yes.

01:36:46 6 Q. That record also says that at the time you came in for
01:36:50 7 this emergency room, that you had a history of pulmonary
01:36:56 8 disease and that you were using an inhaler with albuterol.

01:37:00 9 And you did, in fact, use an inhaler with albuterol; is that
01:37:04 10 correct?

01:37:04 11 A. I used an inhaler, correct, but me having a history of --
01:37:10 12 that's incorrect.

01:37:10 13 Q. All right. Do you recall that later that year, do you
01:37:18 14 recall going to the emergency room again for an asthma attack
01:37:24 15 on September 12th, 2007? Do you remember being admitted
01:37:30 16 there?

01:37:30 17 A. No.

01:37:30 18 Q. And you had -- here, if I might just show you this record
01:37:46 19 from 2007 and just have you look at this, and tell me, are you
01:37:48 20 the Shirley-Terrell that's referenced in that document?

01:37:50 21 MR. COLE: Your Honor, objection. May I have a
01:37:52 22 sidebar about this?

01:37:54 23 THE COURT: All right.

01:37:54 24 (Whereupon, the following further proceedings were had at
01:38:18 25 sidebar, out of the hearing of the jury:)

01:38:18 1 MR. COLE: The numbers you are using aren't the
01:38:24 2 numbers you are using here. I would like the documents.

01:38:26 3 MR. JONES: I have copies.

01:38:28 4 THE COURT: All right,

01:38:28 5 MR. JONES: We didn't mark these, but I have copies
01:38:30 6 of these.

01:38:30 7 THE COURT: Mark them defendant exhibit, not the
01:38:32 8 date, because otherwise --

01:38:34 9 MR. JONES: I apologize. I didn't realize that these
01:38:36 10 had not been marked. But you have them; we just didn't mark
01:38:40 11 them.

01:38:42 12 THE COURT: Counsel needs a reasonable opportunity to
01:38:44 13 see what you're doing.

01:38:44 14 MR. JONES: He does, he does, and I will give it to
01:38:46 15 him.

01:38:46 16 MR. COLE: Right now?

01:38:48 17 MR. JONES: Yes, right now.

01:39:06 18 (The following proceedings were had in open court in the
01:39:08 19 presence and hearing of the jury:)

01:39:10 20 BY MR. JONES:

01:39:10 21 Q. Ma'am, you were still living at 8020 South Maryland,
01:39:14 22 correct?

01:39:14 23 A. Correct.

01:39:14 24 Q. I want to turn to -- just go one, two, three, four, and I
01:39:18 25 will show you a document that has a signature of

01:39:24 1 Shirley-Terrell. Do you see that? You're on the right page.
01:39:28 2 Is that your signature?
01:39:30 3 A. No.
01:39:30 4 Q. That's not your signature, Shirley-Terrell?
01:39:32 5 A. No. That's my name, but I did not write this.
01:39:38 6 Q. All right. Of 9/12- -- which is -- right there? No,
01:39:48 7 right here.
01:39:50 8 A. No.
01:39:50 9 Q. You don't recognize that as your signature?
01:39:52 10 A. No.
01:39:52 11 Q. All right. Now, when you came to Dr. Chhibber's office,
01:40:10 12 it is true, ma'am, that you brought your inhaler with you, did
01:40:14 13 you not?
01:40:14 14 A. No.
01:40:16 15 Q. Well, on the chart that Mr. Cole showed you, the progress
01:40:42 16 report, you see up at the top, you see that in the doctor's
01:41:08 17 progress chart there, it has the word Asthma? Do you see
01:41:10 18 that?
01:41:12 19 A. I see something, but I am not sure what it says.
01:41:16 20 Q. And do you see, Albuterol, two puffs a day? Do you see
01:41:26 21 that? Can you read there?
01:41:26 22 A. I'm not sure what it says, but I see something.
01:41:30 23 Q. Now, I just want to ask you, when you saw Dr. Chhibber
01:41:34 24 that day, do you recall telling him that you were still using
01:41:36 25 the albuterol and that you were taking two puffs every six

01:41:40 1 hours?

01:41:42 2 A. No.

01:41:42 3 Q. All right. Now, the prosecutor asked you, do you recall
01:41:52 4 blowing in the tube for what they call the pulmonary function
01:41:56 5 test?

01:41:56 6 A. Correct.

01:41:56 7 Q. Are you aware that that pulmonary function test indicates
01:42:02 8 that you have asthma?

01:42:02 9 A. No.

01:42:02 10 Q. And you do recall because you did tell the government at
01:42:12 11 some prior time that when you saw Dr. Chhibber, you did
01:42:16 12 complain to him that you had a pain in your back. Do you
01:42:18 13 recall that?

01:42:18 14 A. No.

01:42:26 15 Q. Well, do you recall being interviewed by the government on
01:42:30 16 September 28th, 2011, and telling them that you complained to
01:42:34 17 the doctor that you did have a pain in your back?

01:42:36 18 A. I don't remember.

01:42:36 19 Q. All right. Now, with this asthma, when you did have
01:42:46 20 asthma attacks, would those asthma attacks be marked by
01:42:52 21 shortness of breath?

01:42:54 22 A. I'm not sure.

01:42:54 23 Q. You mean you don't recall when -- you did -- the reason
01:43:00 24 you had albuterol, which is a powerful inhalent, is it not, is
01:43:08 25 because when you had those attacks, would you have shortness

01:43:10 1 of breath? Isn't that true?

01:43:10 2 A. When I had the attacks, I had them when I was pregnant. I
01:43:14 3 haven't had an attack since.

01:43:16 4 Q. That's not my question, ma'am.

01:43:18 5 When you did have the attacks, you had shortness of
01:43:22 6 breath?

01:43:22 7 A. I was wheezing.

01:43:22 8 Q. I'm sorry?

01:43:24 9 A. Wheezing.

01:43:24 10 Q. Yes, wheezing. And from time to time when you had that
01:43:28 11 wheezing when you had those attacks, would you become slightly
01:43:32 12 dizzy?

01:43:34 13 A. I don't remember.

01:43:36 14 Q. When you had those kinds of attacks, would your chest
01:43:40 15 tighten up?

01:43:42 16 A. I don't remember.

01:43:46 17 Q. And, finally, the note that you say that Dr. Chhibber
01:44:24 18 filled out in your presence, that just -- that note just
01:44:28 19 merely said that there was no finding of anything that would
01:44:38 20 keep you from working in a medical or a dental office; isn't
01:44:42 21 that what it said?

01:44:42 22 A. It said everything -- that my health was good.

01:44:46 23 Q. Yes, it does say, General appearance good, right?

01:44:48 24 But then all the rest of it says is, Summary of
01:44:56 25 problem or condition, if any, which may affect the ability of

01:45:00 1 the person to work in a medical/dental office, and it says,

01:45:02 2 None, right?

01:45:04 3 A. Correct.

01:45:04 4 Q. And all it says is that you were found fit to work at a

01:45:10 5 medical or dental facility; is that correct?

01:45:12 6 A. Right.

01:45:12 7 Q. And when you visited with Dr. Chhibber, Dr. Chhibber did

01:45:32 8 not refuse to answer any of your questions, did he?

01:45:34 9 A. No.

01:45:42 10 MR. JONES: May I have one moment, Judge?

01:45:44 11 THE COURT: Yes.

01:46:18 12 BY MR. JONES:

01:46:18 13 Q. You met with the government just one or two days ago; is

01:46:22 14 that correct?

01:46:22 15 A. Correct.

01:46:22 16 Q. Isn't it true that you told the government that the reason

01:46:28 17 you left your last job was not because of the change in hours

01:46:32 18 but because you were having migraine headaches? Isn't that

01:46:36 19 what you told the government?

01:46:36 20 A. No.

01:46:36 21 Q. Well, if the government has that in their report, you

01:46:40 22 don't know how it got there?

01:46:42 23 MR. COLE: Objection, your Honor.

01:46:42 24 THE COURT: Sustained. Argumentative.

01:46:46 25 THE WITNESS: What I told them was --

01:46:46 1 THE COURT: When I sustain an objection, that means
01:46:50 2 you don't -- when there is an objection, let me rule on it
01:46:54 3 because you might not have to answer the question. All right.
01:46:56 4 BY MR. JONES:
01:46:56 5 Q. So you didn't tell one of the government agents that the
01:46:58 6 reason you left was because of migraine headaches?
01:47:02 7 A. No.
01:47:08 8 MR. JONES: I don't have anything further, Judge.
01:47:10 9 THE COURT: Any redirect?
01:47:14 10 MR. COLE: Just a little bit.
01:47:18 11 - - -
01:47:18 12 TIFFANY SHIRLEY-TERRELL, REDIRECT EXAMINATION
01:47:18 13 BY MR. COLE:
01:47:18 14 Q. When you went to see the defendant for your medical exam,
01:47:22 15 did you tell him that when you were pregnant, you were dizzy?
01:47:26 16 A. Repeat that?
01:47:26 17 Q. When you went to see the defendant for your exam, did you
01:47:30 18 tell him two years ago when you were pregnant that you were
01:47:32 19 dizzy?
01:47:34 20 A. No.
01:47:34 21 Q. Did you tell him that you were wheezing when you were
01:47:36 22 pregnant?
01:47:36 23 A. No.
01:47:36 24 Q. Did you tell him that your chest constricted two years ago
01:47:40 25 when you were pregnant?

01:47:42 1 A. No.

01:47:42 2 Q. Did the subject of chest constriction come up?

01:47:46 3 A. No.

01:47:46 4 Q. Did you mention anything to him about pain in your chest?

01:47:54 5 A. No.

01:47:56 6 Q. Shortness of breath?

01:47:56 7 A. No.

01:47:56 8 Q. Dizziness?

01:48:00 9 A. No.

01:48:00 10 Q. Did he mention anything to you at all about heart murmurs?

01:48:06 11 A. No.

01:48:06 12 Q. Carotid bruit?

01:48:08 13 A. No.

01:48:20 14 MR. COLE: I have no further questions, your Honor.

01:48:22 15 THE COURT: Anything further?

01:48:24 16 MR. JONES: I have none, Judge.

01:48:24 17 THE COURT: Thank you. You are excused.

01:48:24 18 (Witness excused.)

01:48:38 19 THE COURT: Who is the government's next witness?

01:48:40 20 MR. HAMMERMAN: Your Honor, the government's next

01:48:42 21 witness is Dennaris Coleman.

01:48:48 22 MR. JONES: Judge, could we have a quick sidebar?

01:48:52 23 THE COURT: Yes.

01:48:52 24 (Whereupon, the following further proceedings were had at

01:49:06 25 sidebar, out of the hearing of the jury:)

01:49:06 1 MR. JONES: Judge, this is a small matter. I think
01:49:08 2 we ironed this out. They are going to play a tape with the
01:49:12 3 witness. Fine. They have a transcript they are going to pass
01:49:16 4 out. The first version of their transcript -- what they have
01:49:20 5 done is we have a different idea of what's said during the
01:49:24 6 tape, and we have our own version. And what the case law in
01:49:28 7 the Seventh Circuit says is that when that happens playing the
01:49:32 8 same tape, they hand out their version, we replay the tape,
01:49:36 9 and we hand out our version. So that's what I would like to
01:49:40 10 do.

01:49:40 11 THE COURT: On cross-examination?

01:49:40 12 MR. JONES: Yes, because they have the right -- it's
01:49:46 13 being played. Incidentally, the version that we are going to
01:49:48 14 give them is their first version that the government gave us,
01:49:52 15 and what happens is when they get to the second version,
01:49:54 16 things change a little bit.

01:49:56 17 All I want to do is when the jury hears the tape,
01:50:00 18 they say one version and then play the tape, and it's only --
01:50:04 19 Judge, it's only like, what, 10 minutes, if that much?

01:50:08 20 MR. HAMMERMAN: May I address, your Honor?

01:50:10 21 THE COURT: Yes.

01:50:10 22 MR. HAMMERMAN: First, when the recordings were first
01:50:14 23 done, there was an individual from the steno pool that types
01:50:18 24 up transcripts. We type draft over those transcripts. We
01:50:22 25 provide them to defense counsel, as I did in this case, with a

01:50:24 1 letter that says, This is a draft. It is only intended to be
01:50:26 2 a draft. We are providing it to you with the understanding
01:50:30 3 that you will not seek to use this in any court proceeding.
01:50:34 4 If you do not accept these conditions because it is not a
01:50:36 5 final draft, we will not provide it to you, and we will wait
01:50:38 6 to give you a final draft.

01:50:40 7 The final drafts were, of course, the drafts that are
01:50:44 8 proofed by the individual who partook in the conversation, who
01:50:46 9 listens to it, who adopts it. The agent who partook in these
01:50:50 10 conversations has listened, he has made any corrections he
01:50:54 11 thought were necessary, those corrections were made on the
01:50:56 12 final draft that have been provided to counsel for months. He
01:50:58 13 signed every page of it.

01:51:00 14 Mr. Jones did not bring up this issue until about
01:51:02 15 five minutes before your Honor took the bench this afternoon.
01:51:06 16 We believe it would be, A, improper to use an old copy that
01:51:10 17 was provided to defense counsel with the express provision
01:51:14 18 that it was not to be used in any way, shape, or form because
01:51:16 19 it was a draft and we were providing it as a courtesy and no
01:51:20 20 other reason; and, B, this is the government's case in chief,
01:51:22 21 this witness has not adopted this draft, he has not reviewed
01:51:26 22 this draft. We believe it would be improper for a defense
01:51:30 23 exhibit --

01:51:30 24 THE COURT: So what's the foundation for playing it
01:51:32 25 with this witness if he doesn't -- he is not the foundation

01:51:36 1 witness?

01:51:36 2 MR. HAMMERMAN: This witness is actually the
01:51:38 3 foundation witness for the final draft, not the draft that was
01:51:42 4 typed by somebody else.

01:51:42 5 What Mr. Jones is going to try to do is in the
01:51:44 6 government's case in chief introduce and publish, it is my
01:51:48 7 understanding, a defense exhibit that has not been reviewed or
01:51:50 8 adopted by this witness. I believe there is no foundation for
01:51:54 9 that, and it would be inappropriate for all of those reasons,
01:51:56 10 your Honor.

01:51:56 11 MR. JONES: Judge, I am only doing what the Seventh
01:52:02 12 Circuit says. We have the cases here that says this is what
01:52:04 13 you do. I am not going to say that this was the government's
01:52:06 14 draft. I am going to say this was ours. This was how we hear
01:52:10 15 it.

01:52:10 16 THE COURT: I am going not going to rule
01:52:12 17 prospectively on something I haven't seen any draft.

01:52:16 18 MR. HAMMERMAN: And neither have I, your Honor.

01:52:18 19 MR. JONES: Can we hand you our draft?

01:52:20 20 THE COURT: Yes.

01:52:22 21 MR. JONES: We will hand you our draft, we will hand
01:52:24 22 you his.

01:52:26 23 THE COURT: When you cross-examine.

01:52:28 24 MR. HAMMERMAN: Just for the record, we also have not
01:52:30 25 seen the cases or been cited any cases, and this was not, of

01:52:32 1 course, put forth before the court in a motion in limine.

01:52:34 2 THE COURT: The burden is on you to show that the
01:52:38 3 transcript would be helpful to the jury, and I haven't heard
01:52:40 4 the questions or the answers yet.

01:52:42 5 MR. HAMMERMAN: Yes, your Honor.

01:52:42 6 MR. JONES: Judge, we are going to hand up a clean
01:52:44 7 copy because they are very short, very short, to both sides,
01:52:48 8 hand one to your Honor and one to them.

01:52:52 9 THE COURT: Okay. We will see what happens.

01:53:12 10 (The following proceedings were had in open court in the
01:53:12 11 presence and hearing of the jury:)

01:53:36 12 (Witness sworn.)

01:53:36 13 THE COURT: Please be seated. Would you tell us your
01:53:40 14 full name and spell your last name, please.

01:53:42 15 THE WITNESS: Dennaris Terrell Coleman,
01:53:46 16 C-o-l-e-m-a-n.

01:53:48 17 MR. HAMMERMAN: May I proceed, your Honor?

01:53:50 18 THE COURT: Yes.

01:53:52 19 - - -

01:53:52 20 DENNARIS TERRELL COLEMAN, DIRECT EXAMINATION

01:53:52 21 BY MR. HAMMERMAN:

01:53:52 22 Q. Sir, would you please tell the members of the jury how you
01:53:54 23 are employed?

01:53:54 24 A. I am a special agent with the Federal Bureau of
01:54:00 25 Investigation.

01:54:00 1 Q. Agent Coleman, how long have you been a special agent with
01:54:04 2 the FBI?
01:54:04 3 A. Approximately 10 years.
01:54:06 4 Q. Are you on any particular squad with the FBI?
01:54:08 5 A. I am on a squad called VC 2, which stands for violent
01:54:12 6 crimes 2.
01:54:14 7 Q. What kind of crimes do you investigate as a member of
01:54:16 8 violent crimes 2?
01:54:18 9 A. Gangs and violent crimes.
01:54:20 10 Q. At some point, did you become involved in the
01:54:22 11 investigation of Dr. Jaswinder Chhibber?
01:54:24 12 A. Yes, I did.
01:54:26 13 Q. In what capacity, sir?
01:54:26 14 A. In an undercover capacity.
01:54:28 15 Q. What do you mean by that?
01:54:28 16 A. Undercover capacity is to go into a situation covertly and
01:54:36 17 fictitious name, hiding your identity as a law enforcement
01:54:40 18 officer in order to gain vital intelligence for evidence of a
01:54:44 19 crime.
01:54:44 20 Q. What were you asked to do in particular in connection with
01:54:48 21 this particular investigation?
01:54:50 22 A. To go into a doctor's office and get a physical
01:54:52 23 examination.
01:54:52 24 Q. What did you understand the purpose of your role in this
01:54:56 25 investigation to be?

01:54:56 1 A. To go in and to ask for a physical examination and see
01:55:04 2 what the doctor would perform the type of tests he does and
01:55:10 3 what he would bill me for.

01:55:10 4 Q. Did you agree to participate in this investigation?

01:55:12 5 A. Yes, I did.

01:55:14 6 Q. Did you use an undercover identity in connection with your
01:55:16 7 role in the investigation?

01:55:18 8 A. Yes, I did.

01:55:18 9 Q. What was the name that you used, Special Agent Coleman?

01:55:22 10 A. Terrell Cole.

01:55:24 11 Q. Did you have identification that night?

01:55:26 12 A. Yes, I did.

01:55:26 13 Q. What kind of identification did you have in the name of
01:55:30 14 Terrell Cole?

01:55:30 15 A. I had a driver's license and I had a Blue Cross/Blue
01:55:34 16 Shield card.

01:55:34 17 Q. Did you, in fact, make an appointment to see Dr. Chhibber?

01:55:36 18 A. Yes, I did.

01:55:38 19 Q. Do you remember approximately when that occurred, sir?

01:55:40 20 A. Yes, sir.

01:55:40 21 Q. When was that?

01:55:40 22 A. February 23rd, 2010.

01:55:44 23 Q. Okay. And did you attend that appointment?

01:55:46 24 A. Yes, I did.

01:55:46 25 Q. Prior to arriving at Dr. Chhibber's office, did you meet

01:55:50 1 with any other investigating agents?

01:55:52 2 A. Yes, I did.

01:55:52 3 Q. Did they give you any instructions?

01:55:54 4 A. Yes, they did.

01:55:56 5 Q. What instructions did they give you?

01:55:56 6 A. They gave me devices, and they gave me instruction to go
01:56:02 7 into the doctor's office where I was at and to go and check in
01:56:06 8 and to essentially not get anything in terms of like any shots
01:56:12 9 or things of that nature.

01:56:12 10 Q. Now, you said they gave you devices. What do you mean by
01:56:16 11 "devices"?

01:56:16 12 A. A recording device.

01:56:16 13 Q. Did you, in fact, go to the doctor's office and record
01:56:20 14 your visit?

01:56:20 15 A. Yes, I did.

01:56:20 16 Q. Have you listened to the recording of your visit to
01:56:24 17 Dr. Chhibber's office?

01:56:24 18 A. Yes, I have.

01:56:26 19 Q. Have you listened to it in its entirety?

01:56:28 20 A. Yes, I have.

01:56:28 21 Q. Have you also listened to a disk that contains clips of
01:56:32 22 that recording?

01:56:34 23 A. Yes, I have.

01:56:34 24 Q. And are those clips that you have reviewed, in fact,
01:56:38 25 portions of the larger entire recording of your visit to

01:56:40 1 Dr. Chhibber's office?

01:56:42 2 A. Yes, they are.

01:56:44 3 MR. HAMMERMAN: May I approach, your Honor?

01:56:44 4 THE COURT: Yes.

01:56:46 5 BY MR. HAMMERMAN:

01:56:56 6 Q. Special Agent Coleman, I am going to hand you what's been
01:56:58 7 marked as Government Exhibit 420 and 421.

01:57:02 8 A. Thank you, sir.

01:57:04 9 Q. Special Agent Coleman, do you recognize the two exhibits
01:57:06 10 that I just handed you?

01:57:08 11 A. Yes, I do.

01:57:08 12 Q. Can you describe them for the jury, sir.

01:57:12 13 A. One is a compact disk and the other is transcripts.

01:57:16 14 Q. And you said you recognized them?

01:57:18 15 A. Yes, I do.

01:57:18 16 Q. How do you recognize them?

01:57:20 17 A. By my signature and the date that I placed on them.

01:57:24 18 Q. All right. And did you, in fact, listen to all the
01:57:26 19 recordings that are on that disk?

01:57:28 20 A. Yes, I did.

01:57:28 21 Q. And is it your understanding or belief that the recordings
01:57:32 22 contained on that disk are true and accurate recordings of
01:57:36 23 your visit to Dr. Chhibber's office on the date that you went
01:57:40 24 in in an undercover capacity?

01:57:42 25 A. Yes.

01:57:44 1 MR. HAMMERMAN: Your Honor, at this point in time,
01:57:46 2 the government would move to admit what's been marked as
01:57:48 3 Government Exhibit 420.

01:57:50 4 THE COURT: That is the recording?

01:57:50 5 MR. HAMMERMAN: It is, your Honor.

01:57:52 6 THE COURT: Any objection to the recording?

01:57:54 7 MR. JONES: Only to what we talked about at sidebar,
01:57:56 8 Judge.

01:57:56 9 THE COURT: All right. The recording -- is it the
01:58:00 10 recording?

01:58:02 11 MR. HAMMERMAN: Yes, your Honor.

01:58:02 12 THE COURT: Exhibit 420 is admitted.

01:58:04 13 (Above-mentioned exhibit was received in evidence.)

01:58:06 14 MR. HAMMERMAN: Thank you, your Honor.

01:58:08 15 BY MR. HAMMERMAN:

01:58:08 16 Q. Now, Special Agent Coleman, have you also looked at what's
01:58:12 17 been marked as Government Exhibit 421?

01:58:12 18 A. Yes, I have.

01:58:14 19 Q. Is that the transcript that you mentioned previously?

01:58:14 20 A. Yes.

01:58:14 21 Q. And have you reviewed that transcript?

01:58:16 22 A. Yes, I have.

01:58:16 23 Q. How do you know you reviewed it?

01:58:18 24 A. By my signature and the date that I affixed on it.

01:58:22 25 Q. Okay. And did you review the transcript while listening

01:58:24 1 to the recordings?

01:58:24 2 A. Yes.

01:58:26 3 Q. You listened to the recording at the same time you looked
01:58:28 4 at the transcript?

01:58:30 5 A. Yes.

01:58:30 6 Q. Did you look at the transcript to try to ensure its
01:58:32 7 accuracy at the time that you were listening to the
01:58:36 8 recordings?

01:58:36 9 A. Yes.

01:58:36 10 Q. To obtain an understanding or -- let me rephrase that. I
01:58:42 11 apologize.

01:58:42 12 Does that transcript accurately reflect the
01:58:44 13 recordings of the meetings that you participated in when you
01:58:48 14 went to Dr. Chhibber's office in 2011?

01:58:50 15 A. Yes.

01:58:50 16 Q. I misspoke, 2010.

01:58:56 17 A. Yes.

01:58:56 18 Q. Sorry about that.

01:59:00 19 MR. HAMMERMAN: Your Honor, at this point in time,
01:59:02 20 the government would seek to admit what's been marked as
01:59:06 21 Government Exhibit 421.

01:59:06 22 THE COURT: It's the recording that's the evidence.
01:59:08 23 Not the transcript. So to the extent the transcript may be
01:59:12 24 helpful to the jury, you may use it; but ladies and gentlemen
01:59:16 25 of the jury, it's the recording that's the evidence. That is

01:59:20 1 what you actually hear.

01:59:22 2 MR. HAMMERMAN: In a moment, your Honor, I would
01:59:24 3 request permission to publish both.

01:59:28 4 THE COURT: Any objection to playing the recording?

01:59:32 5 MR. JONES: No, Judge.

01:59:34 6 THE COURT: Any objection to distributing the
01:59:36 7 transcript?

01:59:36 8 MR. JONES: Only with what we talked about at
01:59:42 9 sidebar, Judge.

01:59:42 10 THE COURT: Yes.

01:59:42 11 MR. JONES: If we could --

01:59:44 12 THE COURT: That could be done on cross-examination.

01:59:46 13 MR. JONES: If we could hand up what we talked to you
01:59:50 14 about at sidebar?

01:59:50 15 THE COURT: How long is the transcript?

01:59:52 16 MR. JONES: A couple pages.

01:59:54 17 THE COURT: All right. Both versions -- the
01:59:58 18 government and the defendant have different versions of the
02:00:00 19 transcript; but, again, members of the jury, it's what you
02:00:06 20 hear, actually hear on the recording, that controls.

02:00:20 21 BY MR. HAMMERMAN:

02:00:22 22 Q. Special Agent Coleman, approximately what time did you get
02:00:24 23 to Dr. Chhibber's office on February 23rd of 2010?

02:00:26 24 A. Approximately 1:45 p.m.

02:00:28 25 Q. Where was Dr. Chhibber's office located?

02:00:36 1 A. South Side of Chicago, 642 East 79th Street.

02:00:40 2 Q. What did Dr. Chhibber's office look like?

02:00:42 3 A. It looked like an office building. When you walk through
02:00:46 4 the door, there is a greeting area and a seating area, a
02:00:50 5 window for the receptionist.

02:00:54 6 MR. HAMMERMAN: Your Honor, may I approach once
02:00:56 7 again?

02:00:56 8 THE COURT: Yes. No need to ask.

02:01:00 9 MR. HAMMERMAN: I apologize, your Honor.

02:01:00 10 BY MR. HAMMERMAN:

02:01:02 11 Q. Special Agent Coleman, I am going to show you what's been
02:01:04 12 marked as Government Exhibit 600. Have you seen that exhibit
02:01:08 13 before, sir?

02:01:08 14 A. Yes, I have.

02:01:10 15 Q. What does Government Exhibit 600 depict, Special Agent
02:01:12 16 Coleman?

02:01:12 17 A. The office of Dr. Chhibber.

02:01:14 18 Q. Is that a fair and accurate depiction of the office that
02:01:18 19 you visited on February 23rd, 2010?

02:01:20 20 A. Yes, it is.

02:01:22 21 MR. HAMMERMAN: The government would seek to admit
02:01:24 22 what's been marked as Government Exhibit 600.

02:01:26 23 MR. JONES: No objection, Judge.

02:01:26 24 THE COURT: Government Exhibit 600 is admitted.

02:01:30 25 MR. HAMMERMAN: Permission to publish, your Honor?

02:01:30 1 THE COURT: Yes.

02:01:32 2 BY MR. HAMMERMAN:

02:01:36 3 Q. Is that, in fact, an accurate depiction, Special Agent
02:01:40 4 Coleman, of the office you went into that day?

02:01:42 5 A. Yes, sir.

02:01:42 6 Q. And is the doors that are depicted on the right-hand side
02:01:44 7 under the blue awning in fact the entrance to Dr. Chhibber's
02:01:48 8 office at that time?

02:01:48 9 A. Yes.

02:01:48 10 Q. When you went into the office, was it located on the first
02:01:52 11 floor or the second floor?

02:01:52 12 A. The first floor.

02:01:54 13 Q. And when you went into the office, can you generally
02:02:00 14 explain to the members of the jury what transpired.

02:02:02 15 A. I walked into the office, and I step up to the
02:02:06 16 receptionist desk and explain to her that I had an
02:02:12 17 appointment.

02:02:12 18 Q. At this point in time, Special Agent Coleman, we are going
02:02:16 19 to play the first portion of the recording that's been
02:02:18 20 previously entered into evidence.

02:02:22 21 (Audio recording played.)

02:02:38 22 BY MR. HAMMERMAN:

02:02:38 23 Q. Special Agent Coleman, had you, in fact, ever been to
02:02:40 24 Dr. Chhibber's office before?

02:02:42 25 A. No, I had not.

02:02:42 1 Q. Where did this conversation take place?

02:02:44 2 A. In the receptionist area.

02:02:46 3 Q. And when you told the receptionist -- was this a

02:02:50 4 receptionist you were speaking to?

02:02:52 5 A. Yes.

02:02:52 6 Q. When you told the receptionist that you had never been to

02:02:56 7 Dr. Chhibber's clinic before, did she ask you to fill out any

02:03:00 8 forms?

02:03:00 9 A. Yes, she did.

02:03:00 10 Q. Were you asked to present any ID?

02:03:02 11 A. Yes, I was.

02:03:02 12 Q. What type of ID were you asked to present, sir?

02:03:06 13 A. My driver's license and my insurance card.

02:03:08 14 Q. I am going to show you, Special Agent Coleman, what's been

02:03:10 15 marked as Government Exhibit 320 and ask you to turn to the

02:03:16 16 pages of the registration form which I believe are on the

02:03:20 17 left-hand side.

02:03:20 18 A. Okay.

02:03:20 19 Q. First of all, Special Agent Coleman, have you reviewed

02:03:24 20 this exhibit before?

02:03:24 21 A. Yes, I have.

02:03:26 22 Q. And do you recognize the forms that are on the left side

02:03:28 23 of this particular exhibit registration forms?

02:03:30 24 A. Yes, I do.

02:03:40 25 Q. Did you, in fact, fill out these forms?

02:03:42 1 A. Yes, I did.

02:03:44 2 Q. They are true and accurate copies of the forms you filled
02:03:46 3 out on the day you visited Dr. Chhibber's office?

02:03:48 4 A. Yes, they are.

02:03:48 5 MR. HAMMERMAN: Your Honor, the government would move
02:03:50 6 to admit what's been marked as Government Exhibit 320.

02:03:56 7 MR. JONES: No objection, your Honor.

02:03:58 8 THE COURT: Government Exhibit 320 is admitted.

02:04:06 9 MR. HAMMERMAN: Permission to publish, your Honor?

02:04:06 10 THE COURT: Yes.

02:04:06 11 BY MR. HAMMERMAN:

02:04:06 12 Q. Is that the ID that you presented that day, Special Agent
02:04:08 13 Coleman?

02:04:08 14 A. Yes, it is.

02:04:08 15 Q. Is it, once again, in the name of Terrell Cole?

02:04:14 16 A. Yes, it is.

02:04:14 17 Q. And then if you go to the next page. Do you see the
02:04:20 18 registration form? Probably on the screen in front of you
02:04:26 19 too.

02:04:26 20 A. Yes, I do.

02:04:26 21 Q. Is that the form you filled out on that day?

02:04:28 22 A. Yes, it is.

02:04:28 23 Q. Did you, in fact, sign this document in the name of
02:04:34 24 Terrell Cole?

02:04:34 25 A. Yes, I did.

02:04:34 1 Q. Is this a fictitious identity that you placed on the
02:04:38 2 registration form at that time?

02:04:38 3 A. Yes, it is.

02:04:38 4 Q. Did you also sign a consent form?

02:04:40 5 A. Yes, I did.

02:04:44 6 Q. Go to the next page. Is this the consent form that you
02:04:46 7 signed?

02:04:46 8 A. Yes, it is.

02:04:48 9 Q. Once again, as Terrell Cole?

02:04:50 10 A. Yes, it is.

02:04:50 11 Q. Go to the next page, please. Once again, is this another
02:04:56 12 form that has another consent for diagnosis form? Do you see
02:05:00 13 that?

02:05:00 14 A. Yes.

02:05:00 15 Q. There is no boxes checked. Did you sign this form also?

02:05:04 16 A. Yes.

02:05:04 17 Q. Did you do all this as part of the registration process at
02:05:08 18 Dr. Chhibber's office on that afternoon?

02:05:08 19 A. Yes, I did.

02:05:10 20 Q. What happened after you filled out these forms sitting in
02:05:18 21 Dr. Chhibber's office?

02:05:18 22 A. I was asked to sit down and wait being called back.

02:05:24 23 Q. And did you, in fact, sit and wait?

02:05:26 24 A. Yes, I did.

02:05:26 25 Q. And after a period of time, did something occur?

02:05:28 1 A. Yes.

02:05:28 2 Q. First of all, how long did you have to wait,
02:05:30 3 approximately?

02:05:30 4 A. Approximately 15, 20 minutes.

02:05:32 5 Q. And after that 15 or 20 minutes, can you tell the members
02:05:36 6 of the jury what transpired.

02:05:36 7 A. Yes. I was called back by one of the attendants, females
02:05:40 8 in the office, taken back into a medical room, and was
02:05:46 9 basically given heart rate and basic vital sign checks that
02:05:54 10 you would get when you go to a doctor, weight, they weighed
02:05:56 11 me, got my height and such.

02:05:58 12 Q. And then what happened, sir?

02:06:00 13 A. After that, I was instructed to go back up to the front
02:06:04 14 and sit and wait.

02:06:04 15 Q. Did you wait for another period of time?

02:06:08 16 A. Yes.

02:06:08 17 Q. Approximately how long?

02:06:10 18 A. Approximately 10, 15 minutes.

02:06:12 19 Q. What happened next, sir?

02:06:12 20 A. I was called back to another waiting room to see
02:06:16 21 Dr. Chhibber.

02:06:22 22 I'm sorry. It was a medical room, not waiting room.

02:06:24 23 Q. Did, in fact, you meet an individual you understood to be
02:06:30 24 Dr. Chhibber?

02:06:30 25 A. Yes, I did.

02:06:32 1 Q. Would you recognize the individual that you met in the
02:06:36 2 doctor's office on that day that you understood to be
02:06:38 3 Dr. Chhibber?

02:06:38 4 A. Yes, I would.

02:06:40 5 Q. I'd ask you to look around the courtroom and if you see
02:06:42 6 the individual you understood to be Dr. Chhibber, would you
02:06:44 7 point him out to the members of the jury by naming an article
02:06:48 8 of clothing that he is wearing or the color of the clothing
02:06:52 9 that he's wearing?

02:06:52 10 MR. JONES: Your Honor, we stipulate to the identity.

02:06:54 11 THE COURT: So stipulated.

02:06:56 12 MR. HAMMERMAN: Thank you, your Honor.

02:06:56 13 BY MR. HAMMERMAN:

02:06:56 14 Q. Special Agent Coleman, did Dr. Chhibber ask you any
02:07:00 15 preliminary questions at the time you first met with him?

02:07:02 16 A. Yes, he did.

02:07:02 17 Q. What type of questions?

02:07:04 18 A. General health questions, what was I there for, had I had
02:07:08 19 -- did I have any concerns or conditions, my reasoning for
02:07:12 20 being there, basically.

02:07:14 21 MR. HAMMERMAN: Can we play the next audio clip,
02:07:16 22 please.

02:07:16 23 (Audio recording played.)

02:09:40 24 BY MR. HAMMERMAN:

02:09:40 25 Q. Now, Special Agent Coleman, the story that you told

02:09:44 1 Dr. Chhibber that's depicted in that audio clip, was that also
02:09:46 2 part of the ruse, that you had an aunt and would pass by the
02:09:52 3 clinic from time to time?

02:09:52 4 A. Yes, it was.

02:09:52 5 Q. That was part of your undercover persona, if you will?

02:09:56 6 A. Yes, it was.

02:09:56 7 Q. During the time that you met with Dr. Chhibber and he
02:09:58 8 asked you about your general medical background, did you tell
02:10:00 9 him at any point in time that there was anything wrong with
02:10:04 10 you?

02:10:04 11 A. No, I did not.

02:10:06 12 MR. HAMMERMAN: Could we play the next audio clip,
02:10:08 13 please.

02:10:08 14 (Audio recording played.)

02:11:32 15 BY MR. HAMMERMAN:

02:11:34 16 Q. Special Agent Coleman, during that portion of the
02:11:34 17 transcript, you told Dr. Chhibber that you were engaged in
02:11:38 18 martial arts. Is that actually true?

02:11:40 19 A. Yes.

02:11:40 20 Q. Do you, in fact, practice martial arts?

02:11:46 21 A. Yes, I do.

02:11:46 22 Q. Is that something that you did back in the time that you
02:11:46 23 visited Dr. Chhibber on a regular basis?

02:11:46 24 A. Yes, I did.

02:11:46 25 Q. You also told Dr. Chhibber that you ran three to five

02:11:50 1 miles every other day. Is that also true?

02:11:52 2 A. Yes, it is.

02:11:52 3 Q. Was that something that you did back in 2010 when you went
02:11:56 4 to go visit Dr. Chhibber?

02:11:56 5 A. Yes, I did.

02:11:56 6 Q. In fact, were you a physically active man back in 2010
02:12:02 7 when you went to Dr. Chhibber's office?

02:12:02 8 A. Yes, I was.

02:12:02 9 Q. At any point during your examination, did Dr. Chhibber
02:12:14 10 indicate to you that you should be concerned about the
02:12:14 11 physical activity that you do?

02:12:16 12 A. No, he did not.

02:12:18 13 Q. Did he suggest any conditions that should be a concern for
02:12:20 14 a physically active individual like yourself?

02:12:22 15 A. No.

02:12:22 16 Q. In your -- what was your impression of his reaction to
02:12:28 17 your statements that you were physically active?

02:12:30 18 MR. JONES: Judge, I am going to object.

02:12:34 19 THE COURT: Sustained as to the form of the question.

02:12:34 20 BY MR. HAMMERMAN:

02:12:34 21 Q. At any point in time, did Dr. Chhibber express any concern
02:12:38 22 about your physical activity?

02:12:40 23 A. No, he did not.

02:12:40 24 Q. Was he congratulatory?

02:12:42 25 A. Yes, he was.

02:12:44 1 Q. Now, in addition to questioning you about your health,
02:12:50 2 generally, at some point, did Dr. Chhibber actually perform an
02:12:52 3 examination on you?

02:12:54 4 A. Yes, he did.

02:12:54 5 Q. What types of examination did he do?

02:12:56 6 A. He looked in my -- he looked down my throat, he took a
02:13:02 7 stethoscope, put it to my chest and to my neck and listened to
02:13:06 8 me.

02:13:06 9 Q. And what do you mean when you say "a stethoscope"? What
02:13:10 10 are you talking about?

02:13:10 11 A. The device that he puts in his ears so he can actually
02:13:14 12 hear what's going on inside me.

02:13:16 13 MR. HAMMERMAN: Can we listen to the next clip,
02:13:18 14 please.

02:13:20 15 (Audio recording played.)

02:15:22 16 BY MR. HAMMERMAN:

02:15:24 17 Q. Special Agent Coleman, during this period of the
02:15:26 18 examination that we just listened to, did you have your shirt
02:15:30 19 off?

02:15:30 20 A. Yes, sir.

02:15:30 21 Q. And was Dr. Chhibber listening to your body using that
02:15:34 22 stethoscope that you described?

02:15:34 23 A. Yes, he was.

02:15:36 24 Q. There was a period in the transcript that you just read
02:15:38 25 and we just heard where Dr. Chhibber said, Okay, perfect. Did

02:15:40 1 you hear that?

02:15:40 2 A. Yes, I did.

02:15:44 3 Q. What had Dr. Chhibber been doing prior to the time that he
02:15:48 4 said, Okay, perfect?

02:15:48 5 A. Listening to my neck, chest, and heart.

02:15:50 6 Q. At any point after listening to your body using that
02:15:50 7 stethoscope, did Dr. Chhibber indicate to you that he heard
02:16:00 8 anything that concerned him or that should concern you?

02:16:00 9 A. No, he did not.

02:16:02 10 Q. Did Dr. Chhibber ask you to lie down, that he wanted to
02:16:06 11 listen to your heart a little bit longer?

02:16:08 12 A. No, he did not.

02:16:08 13 Q. Did he ask you to stand up so that he could listen to your
02:16:10 14 heart a little bit longer?

02:16:12 15 A. No, he did not.

02:16:12 16 Q. Did he ask you to squat down and then stand up and squat
02:16:16 17 down so he could listen to your heart where you were in
02:16:18 18 different positions or after movement?

02:16:20 19 A. No, he did not.

02:16:20 20 Q. Did he express any need to do any further examination of
02:16:24 21 you at that time or to listen to anything else in your body?

02:16:28 22 A. No, he did not.

02:16:32 23 Q. Following that point in the examination, can you tell the
02:16:34 24 members of the jury what happened next.

02:16:36 25 A. He asked me about possibly getting some blood drawn.

02:16:42 1 Q. I'm sorry to interrupt. Let me go ahead and play the next
02:16:46 2 portion of the clip.

02:16:46 3 (Audio recording played.)

02:18:26 4 BY MR. HAMMERMAN:

02:18:28 5 Q. During that portion of the clip, Special Agent Coleman,
02:18:30 6 you hear Dr. Chhibber tell you that you should do an EKG
02:18:34 7 because it is a must every year. Did you hear that?

02:18:36 8 A. Yes.

02:18:36 9 Q. Did Dr. Chhibber ever tell you that it was a must for you
02:18:40 10 in particular?

02:18:40 11 A. No.

02:18:40 12 Q. Did he ever tell you that he heard anything during your
02:18:42 13 exam that he thought an EKG was something that needed to be
02:18:46 14 done based on what he had heard?

02:18:48 15 A. No, he did not.

02:18:48 16 Q. Did you hear the portion of the transcript -- or, I'm
02:18:52 17 sorry, of the recording where Dr. Chhibber says at the time
02:18:54 18 he's telling you you need an EKG that you are a very healthy
02:18:58 19 man?

02:18:58 20 A. Yes, I did.

02:18:58 21 Q. Did he ever qualify that statement?

02:19:00 22 A. No, he did not.

02:19:00 23 Q. Did he ever express any concerns in any way, shape, or
02:19:04 24 form other than to tell you that you were just a healthy man?

02:19:06 25 A. No, he did not.

02:19:08 1 Q. Now, you said there that you wouldn't get blood drawn
02:19:12 2 because you had a phobia of needles. Is that what we heard in
02:19:14 3 the recording?
02:19:14 4 A. Yes, it is.
02:19:16 5 Q. Do you actually have a phobia of needles, Special Agent
02:19:18 6 Coleman?
02:19:18 7 A. No, I do not.
02:19:20 8 Q. Why did you say that?
02:19:20 9 A. I was instructed not to get any intrusive tests, and a
02:19:26 10 needle drawing blood would be just that.
02:19:28 11 Q. You also heard during that portion of the recording that
02:19:32 12 Dr. Chhibber told you that your blood pressure was good. Do
02:19:34 13 you remember hearing that?
02:19:34 14 A. Yes, I do.
02:19:36 15 Q. Did he ever qualify that statement telling you that he had
02:19:38 16 real concerns about your blood pressure and it was something
02:19:40 17 that needed to be further examined?
02:19:42 18 A. No, he did not.
02:19:44 19 MR. HAMMERMAN: Could we play the next clip, please.
02:19:46 20 (Audio recording played.)
02:19:46 21 BY MR. HAMMERMAN:
02:20:32 22 Q. Once again, Dr. Chhibber told you your blood pressure was
02:20:34 23 fine. Did he ever qualify that statement?
02:20:36 24 A. No, he did not.
02:20:36 25 Q. He told you that doing exercise was good. Did he ever

02:20:40 1 express any concerns about someone in your physical condition

02:20:42 2 doing exercise?

02:20:44 3 A. No, he did not.

02:20:44 4 Q. Did he ever tell you anything you heard to qualify either

02:20:46 5 of those statements?

02:20:50 6 A. No, he did not.

02:20:56 7 MR. HAMMERMAN: Let's play the next portion of the

02:20:58 8 transcript.

02:20:58 9 (Audio recording played.)

02:21:08 10 BY MR. HAMMERMAN:

02:21:22 11 Q. Dr. Chhibber told you he wanted you to have an EKG,

02:21:24 12 correct?

02:21:26 13 A. That's correct.

02:21:26 14 Q. And he stated to you that he also wanted you to do it once

02:21:28 15 a year. Is that also right?

02:21:30 16 A. Yes.

02:21:30 17 Q. Did he ever explain why except to say it was something you

02:21:32 18 need to do once a year?

02:21:34 19 A. No, he did not.

02:21:36 20 Q. Did you, in fact, have an EKG done?

02:21:38 21 A. Yes, I did.

02:21:38 22 Q. Can you tell the members of the jury how that occurred.

02:21:40 23 What transpired next after meeting with Dr. Chhibber?

02:21:44 24 A. I walked back to the initial medical room that I was in

02:21:48 25 and took a seat and took off my shirt. And one of the female

02:21:54 1 attendants, medical staff, I assume, put leads on me, the
02:22:00 2 sticky portion, on my body that also were linked to cables and
02:22:04 3 to a machine. It took about five minutes.
02:22:06 4 Q. Once that test was done, what did you do next?
02:22:10 5 A. I put my clothes back on and left shortly thereafter.
02:22:14 6 Q. Did you have another occasion to talk to Dr. Chhibber,
02:22:16 7 though, before you left the clinic?
02:22:18 8 A. Yes, I did.
02:22:22 9 MR. HAMMERMAN: Can we play the next portion of the
02:22:24 10 audio clip.
02:22:26 11 (Audio recording played.)
02:22:36 12 BY MR. HAMMERMAN:
02:22:38 13 Q. At the very end there, you asked Dr. Chhibber, Am I good
02:22:42 14 to go?
02:22:42 15 A. Yes.
02:22:42 16 Q. And how did he respond to that?
02:22:44 17 A. That I was fine, good to go.
02:22:46 18 Q. Did he say you were perfect?
02:22:48 19 A. Yes.
02:22:48 20 Q. That was after you had the EKG done; is that right,
02:22:54 21 Special Agent Coleman?
02:22:54 22 A. That is correct.
02:22:56 23 Q. Did Dr. Chhibber at any point in time during your
02:23:02 24 examination talk to you about what's referred to as a heart
02:23:06 25 murmur?

02:23:06 1 A. No, he did not.

02:23:08 2 Q. At any point in time during your examination, did

02:23:12 3 Dr. Chhibber ask you if your family had a history of heart

02:23:16 4 murmurs?

02:23:16 5 A. No.

02:23:16 6 Q. At any point in time during your examination, did

02:23:22 7 Dr. Chhibber ask you if you had been previously diagnosed with

02:23:26 8 a heart murmur?

02:23:26 9 A. No.

02:23:28 10 Q. At any point in time during your entire visit to

02:23:32 11 Dr. Chhibber's office, did anybody mention the word "murmur"

02:23:38 12 to you at all during that examination?

02:23:40 13 A. No.

02:23:40 14 Q. Did anyone suggest to you that the physical activity you

02:23:46 15 were engaging in, running, doing martial arts, could be

02:23:50 16 dangerous and that your heart showed some signs of

02:23:54 17 abnormalities?

02:23:56 18 A. No.

02:23:56 19 Q. Was there anyone, Dr. Chhibber, his staff, anyone in that

02:24:00 20 clinic, that suggested to you on that day that there was

02:24:04 21 something wrong or could be wrong with your heart that needed

02:24:08 22 further examination?

02:24:10 23 A. No.

02:24:12 24 MR. HAMMERMAN: Your Honor, I have no further

02:24:14 25 questions at this time.

02:24:14 1 THE COURT: Okay. Cross-examination,

02:25:04 2 MR. JONES: May I proceed, your Honor?

02:25:06 3 THE COURT: Yes.

02:25:08 4 - - -

02:25:08 5 DENNARIS TERRELL COLEMAN, CROSS-EXAMINATION

02:25:08 6 BY MR. JONES:

02:25:08 7 Q. Special Agent, there came a time when you were recruited
02:25:12 8 for the undercover assignment in this case; is that correct?

02:25:14 9 A. Yes, sir.

02:25:14 10 Q. Approximately when was it that you were recruited for this
02:25:16 11 undercover program?

02:25:16 12 A. I don't recall the exact date, sir.

02:25:20 13 Q. Well, give me about when do you think it was?

02:25:22 14 A. Within the months or weeks leading up to me actually doing
02:25:30 15 an undercover operation.

02:25:30 16 Q. Was it months or weeks?

02:25:32 17 A. I'm not sure.

02:25:34 18 Q. And when you got into this undercover probe, your group
02:25:38 19 leader was Special Agent Kathy Anton; is that correct?

02:25:42 20 A. Yes, sir.

02:25:44 21 Q. And one of the requirements that you knew when you got
02:25:48 22 into this special probe was that they were looking for
02:25:52 23 African-American agents; isn't that correct?

02:25:56 24 A. I don't remember. I'm not sure.

02:25:58 25 Q. You don't recall that you -- first of all, you know all

02:26:04 1 your other agents who were in this case with you, don't you?

02:26:06 2 A. I know some of them, yes.

02:26:08 3 Q. Any of them white?

02:26:10 4 A. Not that I know of.

02:26:12 5 Q. So you knew that one of the requirements, sir, was that

02:26:16 6 they wanted an African-American to go into a black

02:26:18 7 neighborhood, didn't you?

02:26:20 8 A. I did not know that. I don't recall that.

02:26:22 9 Q. And as an FBI agent, you couldn't figure that out?

02:26:24 10 A. I don't --

02:26:26 11 MR. HAMMERMAN: Objection. Relevance.

02:26:26 12 MR. JONES: It's relevant.

02:26:28 13 THE COURT: Sustained. Argumentative.

02:26:30 14 BY MR. JONES:

02:26:32 15 Q. Now, you also knew when you got recruited for this probe

02:26:38 16 that they wanted people who were medically fit, right?

02:26:42 17 A. I don't know if that came up, but I would assume yes.

02:26:52 18 Q. You mean you would -- you were getting ready to go into a

02:26:56 19 doctor's office, and are you trying to say that nobody ever

02:27:00 20 said to you during the time that you were being recruited that

02:27:02 21 you ought to be medically fit to go into a doctor's office?

02:27:06 22 A. I just don't recall that. I don't recall any

02:27:12 23 conversation.

02:27:12 24 Q. All right. Well, did anybody ever say to you that you

02:27:16 25 were going to go into a doctor's office where you were going

02:27:18 1 to be checked for cardiovascular problems, that you ought not
02:27:22 2 have any cardiovascular problems yourself? Did anybody ever
02:27:28 3 say that to you?

02:27:28 4 A. No.

02:27:28 5 Q. And what else is that prior to this undercover probe that
02:27:36 6 you went in that you can't exactly recall when, you never were
02:27:42 7 given an examination by an FBI doctor just for this undercover
02:27:48 8 probe, were you?

02:27:50 9 A. No, I was not.

02:27:50 10 Q. Now, you know, the prosecutor asked you about did you have
02:28:06 11 a pre-meeting where you were given instructions. Do you
02:28:10 12 recall that?

02:28:10 13 A. Yes.

02:28:10 14 Q. And you told the ladies and gentlemen of the jury that,
02:28:14 15 yeah, there was a pre-meeting where you were given
02:28:16 16 instructions, right?

02:28:16 17 A. Yes.

02:28:16 18 Q. And those instructions were given to you by Special Agent
02:28:24 19 Kathy Anton, right?

02:28:24 20 A. That's correct.

02:28:24 21 Q. And she was the group leader at that time, right?

02:28:28 22 A. That is correct.

02:28:28 23 Q. It was this meeting that was in the form of a briefing;
02:28:28 24 isn't that correct?

02:28:34 25 A. That's correct.

02:28:34 1 Q. Now, do you recall that because we have the tape recording
02:28:40 2 of that briefing that prior to your going in to see
02:28:44 3 Dr. Chhibber, Special Agent Anton asked you whether you had
02:28:48 4 had your blood pressure checked the week before. Do you
02:28:52 5 recall that?

02:28:52 6 A. I believe I do, yes.

02:28:54 7 Q. And on that tape, you advised Ms. Anton that you had your
02:29:00 8 blood pressure checked twice the week before. Do you recall
02:29:04 9 that?

02:29:04 10 A. Yes.

02:29:04 11 Q. And you told Ms. Anton that one of those checks had been
02:29:10 12 by a doctor. Do you recall that?

02:29:10 13 A. I'm not sure. I don't recall that.

02:29:16 14 Q. And you don't recall telling her that not only had you had
02:29:22 15 it checked by a doctor, but they were available for her if she
02:29:26 16 wanted it? Do you recall that?

02:29:26 17 A. I do not recall exactly what I said.

02:29:34 18 Q. Well, here, let me play this for you and see if you tell
02:29:38 19 me if this is you and this is Kathy Anton.

02:29:42 20 MR. HAMMERMAN: Objection, your Honor.

02:29:44 21 THE COURT: Overruled.

02:29:44 22 MR. JONES: Go ahead.

02:29:46 23 (Audio recording played.)

02:30:18 24 BY MR. JONES:

02:30:18 25 Q. That's you, isn't it?

02:30:18 1 A. Yes, sir.

02:30:20 2 Q. And you told her that you could get those records for her
02:30:24 3 if she needed them?

02:30:26 4 A. Yes, I did.

02:30:26 5 Q. My very first question to you is, who was the doctor that
02:30:30 6 you allegedly went to?

02:30:32 7 A. I don't recall.

02:30:34 8 Q. And I bet you what else you can't recall is how --

02:30:38 9 MR. HAMMERMAN: Objection to the form of the
02:30:38 10 question.

02:30:38 11 THE COURT: Please, Mr. Jones.

02:30:42 12 MR. JONES: I'm sorry, Judge.

02:30:42 13 BY MR. JONES:

02:30:42 14 Q. In fact, you don't know how we could get those records
02:30:46 15 either, do you?

02:30:46 16 MR. HAMMERMAN: Objection, your Honor. There is a
02:30:48 17 motion in limine on this issue.

02:30:50 18 THE COURT: Overruled.

02:30:50 19 BY MR. JONES:

02:30:50 20 Q. You don't know how we could get those records, do you?

02:30:52 21 A. No, I do not.

02:30:54 22 Q. Has the government asked you to produce those records?

02:30:58 23 MR. HAMMERMAN: Objection, your Honor.

02:30:58 24 THE COURT: Overruled.

02:31:00 25 THE WITNESS: No, they have not.

02:31:00 1 BY MR. JONES:

02:31:00 2 Q. They haven't told you that we have asked for those
02:31:02 3 records?

02:31:04 4 MR. HAMMERMAN: Objection, your Honor.

02:31:04 5 THE COURT: Overruled.

02:31:04 6 BY MR. JONES:

02:31:08 7 Q. You hear me, don't you?

02:31:08 8 A. I'm sorry. Repeat that again.

02:31:12 9 Q. They haven't told you that we have asked for those records
02:31:14 10 and they say they don't have them?

02:31:18 11 A. They told me that you guys seeked (sic) medical records,
02:31:22 12 and I have given everything --

02:31:24 13 Q. No, I am talking -- you know what I am talking about. I
02:31:26 14 am talking about these records --

02:31:28 15 MR. HAMMERMAN: Objection to the form of the
02:31:28 16 question, your Honor. Argumentative.

02:31:30 17 THE COURT: No comments.

02:31:30 18 MR. JONES: I'm sorry, Judge.

02:31:32 19 THE COURT: Just ask a question.

02:31:32 20 BY MR. JONES:

02:31:34 21 Q. Sir, you know what I mean. Has the government asked you
02:31:34 22 to produce these records that I just played this tape
02:31:38 23 regarding?

02:31:38 24 A. They have asked me for all the records that I had.

02:31:42 25 Q. Wait a minute. Listen to me. Have they asked you for

02:31:48 1 these records?

02:31:48 2 A. That's a hard question to answer because they just asked
02:31:58 3 me for all my medical records, and I have given them what I
02:32:02 4 have.

02:32:02 5 Q. And you don't happen to have these records, right?

02:32:04 6 MR. HAMMERMAN: Objection, your Honor.

02:32:06 7 THE COURT: Overruled.

02:32:06 8 THE WITNESS: At this point, I don't even remember
02:32:08 9 what doctor I went to. That was two years ago. I can't
02:32:14 10 remember what that would have been about.

02:32:14 11 BY MR. JONES:

02:32:16 12 Q. Even you as an FBI agent, what you are telling us is even
02:32:20 13 you have a little trouble with recollection from two years
02:32:22 14 ago. Is that what you're telling us?

02:32:24 15 A. Yes, sir.

02:32:24 16 Q. Now, when you visited the clinic on February 23rd, 2010,
02:33:14 17 your vital signs were taken; is that correct?

02:33:16 18 A. That is correct.

02:33:16 19 Q. And at that time, your vital signs were listed as you
02:33:22 20 being five-nine and your weight 253 pounds; is that correct?

02:33:28 21 A. That is correct.

02:33:28 22 Q. Now, you recall that when you have mandatory physical by
02:33:32 23 the FBI in January 29th, '09, that at that time, you weighed
02:33:38 24 250 pounds; is that correct?

02:33:40 25 A. That is correct.

02:33:40 1 Q. And when you weighed 250 pounds, the FBI doctor told you
02:33:46 2 that you ought to lose somewhere between 50 and 70 pounds,
02:33:50 3 didn't he?

02:33:50 4 A. That is correct.

02:33:52 5 Q. But you didn't point -- in fact, in the interim, you
02:33:56 6 gained three pounds, right?

02:33:58 7 A. That is correct.

02:33:58 8 Q. Now, you got an EKG in the doctor's office; is that
02:34:08 9 correct?

02:34:08 10 A. That's correct.

02:34:08 11 Q. And you are aware, sir, are you not, that that EKG that
02:34:16 12 you got in the doctor's office that the government complains
02:34:22 13 about in this case --

02:34:22 14 MR. HAMMERMAN: Object to the form of the question,
02:34:24 15 your Honor.

02:34:24 16 THE COURT: Would you rephrase, please.

02:34:26 17 MR. JONES: I can, Judge.

02:34:28 18 BY MR. JONES:

02:34:28 19 Q. You are aware, sir, that the EKG that you received in the
02:34:32 20 doctor's office that day the government -- that's one of the
02:34:36 21 counts in this indictment, for giving you that EKG, right?

02:34:42 22 A. That's correct.

02:34:42 23 Q. You are aware, sir, are you not, that your EKG that day
02:34:48 24 registered abnormal, are you not?

02:34:48 25 A. According to what I've seen, yes.

02:34:52 1 Q. And haven't you been told that even the government's
02:34:56 2 expert in this case finds that that EKG is abnormal?

02:35:00 3 MR. HAMMERMAN: Objection. Foundation.

02:35:02 4 THE COURT: Sustained.

02:35:04 5 MR. JONES: Well, Judge, I am only asking --

02:35:04 6 BY MR. JONES:

02:35:08 7 Q. Has the government told you anything about the experts in
02:35:10 8 this case?

02:35:10 9 A. Yes.

02:35:10 10 Q. Well, have they told you that their own expert finds that
02:35:14 11 your EKG is abnormal?

02:35:16 12 A. No.

02:35:16 13 Q. But, of course, when you were told that your EKG was
02:35:24 14 abnormal, sir, that didn't come as a surprise to you, did it?

02:35:30 15 A. I was not told that my EKG was abnormal by the government.

02:35:34 16 Q. Well, didn't you have, on March 11th, 2010 -- 2011, I'm
02:35:48 17 sorry. On March 11th, 2011, did you have a conversation with
02:35:54 18 Special Agent Roelofs, who sits at this table here?

02:36:02 19 A. I don't remember the date, but I had several conversations
02:36:06 20 with her.

02:36:06 21 Q. Well, do you recall on that date having a conversation
02:36:08 22 with her where she asked you, where she told you that your EKG
02:36:12 23 had registered an abnormal spike?

02:36:16 24 A. According to the EKG that they got from Dr. Chhibber, yes.

02:36:20 25 Q. And she told you that, right?

02:36:22 1 A. Correct.

02:36:22 2 Q. In fact, on that day that you had that conversation with
02:36:26 3 her, didn't you tell Special Agent Roelofs that you had had
02:36:36 4 two bureau physicals in January and April that same year and
02:36:42 5 both showed the same abnormal spike as on Dr. Chhibber's EKG?
02:36:46 6 Didn't you tell Special Agent Roelofs that?

02:36:50 7 A. I don't recall that, sir.

02:36:52 8 Q. Well, are you aware that on that date, Special Agent
02:37:00 9 Roelofs said just what I read?

02:37:02 10 MR. HAMMERMAN: Object to the form of the question.
02:37:04 11 Hearsay and already answered.

02:37:04 12 THE COURT: Sustained. Sustained.

02:37:06 13 BY MR. JONES:

02:37:06 14 Q. Are you aware that the contents of your conversation with
02:37:10 15 Special Agent Roelofs were immediately reported to the United
02:37:14 16 States Attorney's Office?

02:37:16 17 MR. HAMMERMAN: Objection to the form of the
02:37:16 18 question, foundation.

02:37:18 19 THE COURT: Well, it's a foundational question. The
02:37:22 20 question is are you aware?

02:37:24 21 MR. JONES: Yes.

02:37:24 22 THE COURT: All right.

02:37:26 23 BY MR. JONES:

02:37:26 24 Q. Are you aware of that?

02:37:26 25 A. No, I'm not.

02:37:28 1 Q. Well, let me show you this, which has been marked as

02:37:32 2 Defendant's Exhibit 36, which purports to be --

02:37:36 3 MR. HAMMERMAN: Objection, your Honor.

02:37:36 4 THE COURT: All right.

02:37:38 5 MR. JONES: That would be hearsay, and Agent --

02:37:38 6 THE COURT: Well, it's a foundational question. I am

02:37:42 7 just going to ask Mr. Jones, don't characterize the contents.

02:37:46 8 It's not in evidence.

02:37:46 9 BY MR. JONES:

02:37:48 10 Q. All right. Let me show you Defendant's Exhibit 36, which

02:37:50 11 purports to be a summary of your conversation with Special

02:38:02 12 Agent Anton. I want you to read that.

02:38:22 13 A. Okay. I read it.

02:38:22 14 Q. Well, are you aware of the contents of this email from

02:38:26 15 Special Agent Anton?

02:38:26 16 MR. HAMMERMAN: Object to the form of the question.

02:38:30 17 THE COURT: Sustained. Sustained as to form.

02:38:32 18 BY MR. JONES:

02:38:32 19 Q. Have you ever seen this email before?

02:38:34 20 A. Not until just now.

02:38:36 21 Q. And are you trying to tell me that -- well, I guess then

02:38:46 22 you don't recall telling Special Agent Anton that you have had

02:38:52 23 two previous bad spikes?

02:38:54 24 MR. HAMMERMAN: Object to the form of the question.

02:38:54 25 THE COURT: Overruled.

02:38:56 1 BY MR. JONES:

02:38:58 2 Q. Do you understand my question?

02:38:58 3 A. Yes.

02:38:58 4 Q. What's the answer?

02:39:00 5 A. I don't recall.

02:39:02 6 Q. Telling her that.

02:39:04 7 A. No, I do not.

02:39:04 8 Q. Well, you know, let me ask you something about FBI

02:39:06 9 procedure. When FBI agents write things down, that's very

02:39:14 10 serious, isn't it?

02:39:14 11 A. Yes, it is.

02:39:14 12 Q. In fact, it's the kind of seriousness that once you write

02:39:20 13 something down and people don't tell you the truth, they can

02:39:24 14 be indicted; isn't that right?

02:39:26 15 MR. HAMMERMAN: Objection, your Honor.

02:39:28 16 THE COURT: Sustained.

02:39:28 17 BY MR. JONES:

02:39:30 18 Q. Well, you expect that when a special agent writes

02:39:36 19 something down, do you not, that it's truthful?

02:39:40 20 A. Yes.

02:39:42 21 Q. Now, do you recall that when you were being briefed by

02:40:08 22 Special Agent Anton that she told you that Dr. Chhibber,

02:40:16 23 according to the other agents who had gone in, had been quite

02:40:20 24 engaging? Do you remember that?

02:40:20 25 A. I don't recall.

02:40:22 1 Q. Do you recall -- you don't recall that Special Agent Anton
02:40:28 2 said, look, He'll talk to you? You don't recall that?

02:40:30 3 A. No, I do not.

02:40:34 4 MR. JONES: Play it.

02:40:36 5 MR. HAMMERMAN: Objection your Honor. It's not in
02:40:38 6 evidence.

02:40:38 7 THE COURT: Overruled.

02:40:42 8 (Audio recording played.)

02:41:02 9 BY MR. JONES:

02:41:04 10 Q. That's Special Agent Anton talking to you, right?

02:41:06 11 A. Yes, sir.

02:41:08 12 Q. And what she says to you is that he'll gladly talk to you.
02:41:10 13 Isn't that what she said?

02:41:12 14 A. Yes, she did.

02:41:12 15 Q. And during the course -- we've seen here that during the
02:41:22 16 course of the tape recording that the doctor talks to you
02:41:26 17 about the EKG, doesn't he?

02:41:28 18 A. Yes, leading up to it, he does.

02:41:32 19 Q. Yeah. And he wants you to have the EKG. You remember
02:41:34 20 that?

02:41:36 21 A. Yes.

02:41:36 22 Q. And at that point, sir, you could have asked him any
02:41:40 23 question that you wanted to; isn't that true?

02:41:44 24 A. That is true.

02:41:44 25 Q. You could have asked him, including, Doctor, tell me why

02:41:52 1 you want me to have the EKG? You could have done that,
02:41:54 2 couldn't you?

02:41:56 3 A. I could have.

02:41:58 4 Q. But you know what? You chose not to do it here; isn't
02:41:58 5 that correct?

02:42:02 6 A. I relied on his expertise.

02:42:04 7 Q. I didn't ask you that.

02:42:06 8 MR. HAMMERMAN: Objection. Argumentative, your
02:42:08 9 Honor.

02:42:08 10 MR. JONES: No, I asked him a simple question, Judge.

02:42:08 11 BY MR. JONES:

02:42:12 12 Q. You chose not to do it?

02:42:10 13 THE COURT: Objection is overruled.

02:42:14 14 Now, when there is an objection, would you hold off?
02:42:16 15 Okay.

02:42:16 16 MR. JONES: I'm sorry, Judge.

02:42:16 17 BY MR. JONES:

02:42:16 18 Q. You chose not to do it, didn't you?

02:42:18 19 A. I chose not to.

02:42:20 20 Q. In fact, you know, normally, when the FBI -- you have been
02:42:24 21 an FBI agent for 10 years, and you go out on various probes
02:42:30 22 and you go to people's houses and all that; normally, what you
02:42:34 23 want people to do is to talk their heads off, don't you?

02:42:36 24 A. That is correct.

02:42:38 25 Q. You want them to talk themselves into the penitentiary;

02:42:42 1 isn't that right?

02:42:44 2 A. No.

02:42:44 3 Q. Well, but you know what? On this particular case with

02:42:50 4 Dr. Chhibber, you chose not to do that, right?

02:42:54 5 A. I chose to?

02:42:56 6 Q. Not to ask him any questions.

02:43:00 7 A. Yes, I chose not to ask him questions.

02:43:02 8 Q. And the reason you chose to forego the opportunity to seek

02:43:06 9 the answers out of the doctor's own mouth was that your

02:43:10 10 investigation was not a search for the truth, was it?

02:43:14 11 MR. HAMMERMAN: Object to the form of the question,

02:43:14 12 your Honor.

02:43:16 13 THE COURT: Sustained.

02:43:16 14 BY MR. JONES:

02:43:18 15 Q. You did not, sir -- the sole purpose of your investigation

02:43:22 16 was to try to set the doctor up, wasn't it?

02:43:24 17 MR. HAMMERMAN: Objection to the form of the

02:43:26 18 question, your Honor.

02:43:26 19 THE COURT: Sustained.

02:43:26 20 BY MR. JONES:

02:43:30 21 Q. Well, you know, we talked about that pre-interview that

02:43:36 22 you had with Kathy Anton. I want to ask you this, do you

02:43:40 23 remember this. Do you remember that Special Agent Anton told

02:43:44 24 you, Special Agent, that if you didn't screw up the interview

02:43:52 25 with Dr. Chhibber, you would be a star? Do you remember that?

02:43:56 1 MR. HAMMERMAN: Objection, your Honor.

02:43:58 2 THE COURT: Overruled.

02:43:58 3 BY MR. JONES:

02:44:00 4 Q. Do you remember that?

02:44:00 5 A. I don't.

02:44:02 6 MR. JONES: Play it.

02:44:10 7 BY MR. JONES:

02:44:10 8 Q. And, incidentally, she didn't use the words "screw up,"
02:44:14 9 but play it.

02:44:14 10 (Audio recording played.)

02:44:22 11 BY MR. JONES:

02:44:22 12 Q. That's you, isn't it? And that's Special Agent Kathy
02:44:26 13 Anton, isn't it?

02:44:28 14 A. Yes, it is.

02:44:28 15 Q. Now, what she meant by your being a star was to get a
02:44:38 16 feather in your cap by getting a conviction; isn't that what
02:44:40 17 she meant?

02:44:42 18 MR. HAMMERMAN: Objection as to foundation as to what
02:44:44 19 Anton thought.

02:44:44 20 THE COURT: Sustained as to the form of the question.

02:44:46 21 BY MR. JONES:

02:44:46 22 Q. Isn't that what you believed that she meant?

02:44:48 23 MR. HAMMERMAN: Objection. Relevancy.

02:44:50 24 THE COURT: Overruled.

02:44:52 25 BY MR. JONES:

02:44:52 1 Q. Isn't that what you believed what she meant?

02:44:54 2 A. No.

02:44:56 3 Q. Well, how else were you going to be a star? Tell the
02:45:00 4 ladies and gentlemen of the jury how else you were going to be
02:45:02 5 a star.

02:45:02 6 A. Agents aren't stars. As an undercover, I have never been
02:45:08 7 a star in a case.

02:45:10 8 Q. And, incidentally, when she tells you that if you don't
02:45:12 9 fuck this up, you could be a star, you don't say that to her,
02:45:14 10 do you? You just laugh and smile, don't you?

02:45:18 11 MR. HAMMERMAN: Objection. Relevance, your Honor.

02:45:18 12 THE COURT: Overruled.

02:45:22 13 BY MR. JONES:

02:45:32 14 Q. Now, they talked to you on direct examination about this.
02:45:38 15 One of the things that Special Agent Anton told you not to do
02:45:44 16 was to get any blood work, right?

02:45:46 17 A. That's correct.

02:45:46 18 Q. And she told you if they ask you for any blood work, just
02:45:50 19 make up something. Isn't that what she told you?

02:45:52 20 A. I can't remember if she directed me as to what to say, but
02:45:56 21 she told me not to get any blood work.

02:46:00 22 Q. And the reason she didn't want you to get any blood work
02:46:02 23 was that if you got any blood work, you might come up with the
02:46:06 24 kind of exculpatory evidence that would help the doctor; isn't
02:46:10 25 that right?

02:46:10 1 MR. HAMMERMAN: Objection. Foundation. Form of the
02:46:12 2 question.

02:46:12 3 THE COURT: Sustained as to form.

02:46:14 4 BY MR. JONES:

02:46:14 5 Q. Well, let me put it to you this way. It was the FBI's
02:46:24 6 belief that if you got blood work, it might give exculpatory
02:46:30 7 evidence; isn't that right?

02:46:32 8 MR. HAMMERMAN: Objection, your Honor.

02:46:32 9 THE COURT: Sustained.

02:46:32 10 BY MR. JONES:

02:46:34 11 Q. Well, why don't you tell us why the FBI didn't want you to
02:46:36 12 have blood work.

02:46:38 13 A. It's intrusive. As an undercover, the FBI tries not to
02:46:44 14 put us in positions that overly intrudes upon us. Just like
02:46:46 15 when I do dope undercover, I don't go smoke dope. In this
02:46:50 16 case, I was just told to not get any intrusive checks.

02:46:54 17 Q. In fact, she didn't tell you intrusive. She just told you
02:46:58 18 not to get any blood work. She didn't use the word
02:47:02 19 "intrusive," did she?

02:47:02 20 A. Not at this instance, no.

02:47:04 21 Q. What do you mean not -- certainly not when she was giving
02:47:06 22 you the briefing on tape, she didn't use the word "intrusive,"
02:47:10 23 did she?

02:47:10 24 A. Not on tape.

02:47:10 25 Q. And are you trying to equate for the ladies and gentlemen

02:47:18 1 of the jury that getting a little blood done was like smoking
02:47:22 2 dope? Is that what you want us to believe?

02:47:26 3 A. I followed the instructions.

02:47:28 4 Q. Now, the prosecutor asked you about the EKG. Do you
02:48:00 5 recall that?

02:48:00 6 A. Yes, I do.

02:48:00 7 Q. Now, the truth of the matter is that you were interviewed
02:48:08 8 on March 11th by Special Agent Roelofs, who sits at the table,
02:48:16 9 and didn't she ask you about your recollections about what
02:48:24 10 happened with you and the doctor and the EKG? Do you recall
02:48:32 11 that?

02:48:32 12 A. Yes, we had a conversation that day. I don't remember all
02:48:36 13 the impacts of the conversation.

02:48:36 14 Q. Do you recall Special Agent Roelofs writing in an FBI 302
02:48:42 15 or asking you and you said --

02:48:44 16 MR. HAMMERMAN: Objection to the form of the
02:48:46 17 question, your Honor. Counsel is reading a 302 again.

02:48:50 18 THE COURT: That objection is overruled.

02:48:52 19 BY MR. JONES:

02:48:52 20 Q. Do you recall Special Agent Roelofs -- you telling Special
02:49:02 21 Agent Roelofs that you were unable to recall whether
02:49:04 22 Dr. Chhibber reviewed the results of the EKG? Do you remember
02:49:08 23 that?

02:49:08 24 A. I don't recall the details of our conversation from a
02:49:14 25 year, two years ago.

02:49:14 1 Q. Well, maybe if I showed you her FBI 302, that would help?

02:49:22 2 A. Yes, sir.

02:49:22 3 Q. And you know what an FBI 302 is, right?

02:49:28 4 A. Yes, I do.

02:49:28 5 Q. That's a report that's written out by a special agent
02:49:34 6 after they have had an opportunity to interview a witness,
02:49:38 7 right?

02:49:38 8 A. That's correct.

02:49:40 9 Q. And if you lie to an FBI agent who puts out the 302, go to
02:49:44 10 jail, right?

02:49:44 11 MR. HAMMERMAN: Objection. Relevance, your Honor.

02:49:46 12 THE COURT: Sustained as to the form of the question.

02:49:48 13 BY MR. JONES:

02:49:48 14 Q. You have to tell an agent, even you as an FBI agent, you
02:49:52 15 have to tell another agent the truth; isn't that right?

02:49:56 16 A. Correct.

02:49:56 17 Q. Now, does that refresh your recollection as to what you
02:50:00 18 told Special Agent Roelofs?

02:50:02 19 A. Yes, it does.

02:50:04 20 Q. And the question I just asked you was, didn't you tell
02:50:08 21 Special Agent Roelofs that you couldn't remember whether
02:50:12 22 Dr. Chhibber had the EKG -- wait a minute.

02:50:16 23 First of all, did you put you were unable to recall
02:50:18 24 whether Dr. Chhibber reviewed the results of the EKG? That's
02:50:22 25 what you told her, right?

02:50:24 1 A. Yes, at that time. I did not recall.

02:50:26 2 Q. All right. And you also told her when she asked you that
02:50:30 3 you did not remember whether Dr. Chhibber had the EKG results
02:50:34 4 in his hand as you spoke to him. Isn't that what you told
02:50:40 5 her?

02:50:42 6 A. At that time, I couldn't recall, so, yes.

02:50:44 7 Q. Incidentally, your recorder worked that day; is that
02:51:06 8 correct?

02:51:06 9 A. That's correct.

02:51:06 10 Q. Now, before you walked into the office, had you been told
02:51:12 11 that there had been two prior occasions where the tape
02:51:14 12 recorders of other agents had not worked?

02:51:16 13 MR. HAMMERMAN: Objection. Relevance.

02:51:18 14 THE COURT: Would you rephrase, please.

02:51:22 15 BY MR. JONES:

02:51:24 16 Q. Did you know whether -- had you been -- were you aware in
02:51:28 17 any fashion that the tape recorders of two other agents had
02:51:32 18 failed?

02:51:34 19 A. I don't remember. I do know that there were some tape
02:51:38 20 recording failure, but I don't know if I learned that before
02:51:40 21 or after I did this recording.

02:51:40 22 Q. Did they take special precautions with you to make sure
02:51:44 23 that the tape did not fail?

02:51:46 24 A. I don't know what precautions they took. I didn't handle
02:51:50 25 -- I was just handed the device.

02:52:04 1 MR. JONES: May I have a moment, Judge?

02:52:06 2 THE COURT: Yes.

02:52:08 3 (Brief pause.)

02:52:56 4 MR. JONES: Judge, you know, my last thing would be,
02:53:00 5 you recall the motion at sidebar, we wanted a certain
02:53:04 6 portion --

02:53:04 7 THE COURT: Yes.

02:53:06 8 MR. JONES: -- played with our version?

02:53:06 9 THE COURT: Yes. Go ahead.

02:53:10 10 MR. JONES: All right.

02:53:24 11 THE COURT: Members of the jury, when the recording
02:53:26 12 was played before, you recall I said there was some difference
02:53:30 13 of opinion about the transcript itself and it's what you hear,
02:53:34 14 not what you see in the transcript, that counts.

02:53:38 15 MR. HAMMERMAN: Your Honor, may I at least inquire of
02:53:40 16 Mr. Jones what he is going to play?

02:53:42 17 THE COURT: Would you talk privately, please.

02:53:46 18 MR. HAMMERMAN: Thank you, your Honor.

02:53:54 19 Your Honor, may we have a sidebar?

02:53:54 20 (Whereupon, the following further proceedings were had at
02:54:14 21 sidebar, out of the hearing of the jury:)

02:54:14 22 MR. HAMMERMAN: Your Honor, counsel for Mr. Chhibber
02:54:18 23 has just informed me they intend to play the entire 14 minutes
02:54:22 24 of a totally new transcript without identifying for the
02:54:24 25 government the portion of the transcript they think is

02:54:26 1 inaccurate. We have no idea why they are now going to suggest
02:54:30 2 to the jury that the entire transcript is inaccurate.

02:54:32 3 Mr. Jones has not pointed to a single portion of this
02:54:34 4 transcript that he thinks is wrong, and I think the impression
02:54:38 5 that is left with the jury is that, once again, the
02:54:40 6 government, consistent with some of the questions Mr. Jones
02:54:44 7 has asked, is trying to deceive. I think it would be
02:54:48 8 incredibly unfair to do this, 14-minute replaying of this
02:54:54 9 entire transcript.

02:54:54 10 MR. JONES: You know, Judge, what I want to do with
02:54:56 11 this is -- you know what? If we can recall this witness at a
02:55:06 12 later time, I might see if I can truncate the whole thing.

02:55:10 13 THE COURT: Yes.

02:55:12 14 MR. JONES: It seems like --

02:55:14 15 THE COURT: Yes. Let's do that.

02:55:14 16 MR. HAMMERMAN: Thank you, your Honor.

02:55:16 17 MR. JONES: Incidentally, one thing. One thing,
02:55:20 18 Judge, while we are here. Obviously, as your Honor knows, we
02:55:34 19 whipped through jury selection today.

02:55:36 20 THE COURT: It was admirable.

02:55:40 21 MR. JONES: I thought you would think that. What
02:55:42 22 happens is, admirably, he told us last night who three
02:55:48 23 witnesses were. I was just wondering if we get through those
02:55:50 24 three, this will be the only day we ask this, Judge, the
02:55:56 25 court's indulgence, to quit after those three.

02:55:58 1 THE COURT: No.

02:56:00 2 MR. JONES: In a word, no. Okay.

02:56:14 3 (The following proceedings were had in open court in the
02:56:16 4 presence and hearing of the jury:)

02:56:16 5 MR. JONES: I don't have any further questions,
02:56:18 6 Judge.

02:56:18 7 THE COURT: Any redirect?

02:56:20 8 MR. HAMMERMAN: Yes, your Honor.

02:56:42 9 - - -

02:56:42 10 DENNARIS TERRELL COLEMAN, REDIRECT EXAMINATION

02:56:42 11 BY MR. HAMMERMAN:

02:56:44 12 Q. Special Agent Coleman, I have a few questions for you. Do
02:56:46 13 you remember the questions that Mr. Jones was asking you about
02:56:48 14 the need to put a feather in your cap? Do you remember that?

02:56:52 15 A. Yes.

02:56:52 16 Q. How long have you been an FBI agent, sir?

02:56:56 17 A. Ten years.

02:56:56 18 Q. How long have you been doing undercover work?

02:56:58 19 A. The entire 10 years.

02:57:00 20 Q. And during that entire 10 years that you have been doing

02:57:02 21 undercover work, how often do you do undercover work? Weekly,
02:57:06 22 monthly?

02:57:08 23 A. Weekly, at times.

02:57:08 24 Q. And you are a member of violent crimes squad number 2?

02:57:14 25 A. I am.

02:57:16 1 Q. And you said before that you do work with gang and drugs
02:57:18 2 and violent crimes?

02:57:20 3 MR. JONES: Judge, I am going to object.

02:57:22 4 THE COURT: Sustained. Improper redirect.

02:57:24 5 BY MR. HAMMERMAN:

02:57:26 6 Q. Did you need a feather in your cap, Special Agent Coleman?

02:57:28 7 A. No, I did not.

02:57:28 8 Q. Mr. Jones asked you a lot of questions about your
02:57:36 9 conversation with Special Agent Anton before you went in to
02:57:40 10 that meeting. Do you remember those questions?

02:57:42 11 A. Yes, sir.

02:57:42 12 Q. Just so it's clear, you had said you had a physical and
02:57:48 13 your blood pressure done; is that right?

02:57:50 14 A. That's correct.

02:57:50 15 Q. All right. Is it your understanding that your medical
02:57:52 16 records were requested by the defense?

02:57:56 17 A. Yes.

02:57:56 18 Q. And did you consent to have those turned over?

02:58:00 19 A. Yes, I did.

02:58:00 20 Q. Did you -- in fact, when you went in to Dr. Chhibber's
02:58:06 21 office, did you receive an EKG?

02:58:08 22 A. I did.

02:58:08 23 Q. Did Dr. Chhibber -- I think Mr. Jones asked you a lot of
02:58:12 24 questions about the questions you could ask Dr. Chhibber about
02:58:14 25 why you were getting an EKG. Do you remember those questions?

02:58:16 1 A. I do.

02:58:18 2 Q. Did Dr. Chhibber ever tell you why you were getting an
02:58:20 3 EKG?

02:58:20 4 A. No, he did not.

02:58:22 5 Q. I am going to show you a record out of Dr. Chhibber's
02:58:32 6 medical file for Terrell Cole. Do you see that, sir?

02:58:44 7 A. I do.

02:58:46 8 Q. This is a progress note. It's a chart inside of your
02:58:54 9 Terrell Cole file. Do you see that?

02:58:54 10 A. I do.

02:58:54 11 Q. When we go down to the diagnosis section, do you see that
02:58:58 12 right there?

02:58:58 13 A. I do.

02:59:00 14 Q. Did Dr. Chhibber tell you you had a heart murmur?

02:59:06 15 MR. JONES: Judge, wait a minute. I object.

02:59:06 16 THE COURT: Sustained. Sustained. All right.

02:59:10 17 Control yourself, Mr. Jones.

02:59:12 18 BY MR. HAMMERMAN:

02:59:14 19 Q. Mr. Jones asked you about whether you learned what the
02:59:20 20 results of that tests were. Do you remember those questions?

02:59:22 21 A. Yes.

02:59:22 22 Q. He asked you whether as a result of that EKG, you were
02:59:26 23 told that you had to undergo any additional examination?

02:59:34 24 MR. JONES: Objection. Never asked that question.

02:59:36 25 THE COURT: Sustained.

02:59:38 1 MR. HAMMERMAN: I will rephrase, your Honor.

02:59:40 2 BY MR. HAMMERMAN:

02:59:40 3 Q. He asked you whether or not you had learned whether the

02:59:44 4 EKG showed I think he called it a spike. Do you remember that

02:59:46 5 question?

02:59:46 6 A. Yes.

02:59:48 7 Q. I am going to show you -- once again, this is a printout.

02:59:56 8 It looks like a chart with some lines squiggling across there.

03:00:00 9 Do you see the name in the upper left-hand corner?

03:00:02 10 A. Yes, I do.

03:00:04 11 Q. Do you see the name Terrell Cole?

03:00:06 12 A. Yes, I do.

03:00:06 13 Q. Do you see here where it says on the top, Abnormal EKG?

03:00:14 14 A. Yes, I do.

03:00:14 15 Q. Did Dr. Chhibber, after you received the EKG, say,

03:00:20 16 Mr. Cole, we need to talk, you had an abnormal EKG?

03:00:24 17 A. No, he did not.

03:00:24 18 Q. Did he tell you that there had been an abnormal spike in

03:00:28 19 your EKG report?

03:00:30 20 A. No, he did not.

03:00:32 21 Q. Did he suggest to you that abnormalities in an EKG report

03:00:36 22 could be the sign of a serious medical condition?

03:00:40 23 A. No, he did not.

03:00:42 24 Q. Did he tell you that you needed any further testing for

03:00:44 25 your abnormal EKG?

03:00:48 1 A. No, he did not.

03:00:48 2 Q. Did he tell you that he wanted to send to you a specialist

03:00:52 3 to look into that heart murmur and your abnormal EKG?

03:00:56 4 A. No, he did not.

03:00:58 5 Q. Did he give you any instructions regarding physical

03:01:00 6 activity?

03:01:02 7 A. No, he did not.

03:01:02 8 Q. Did he give you any instructions over diet?

03:01:06 9 A. No, he did not.

03:01:06 10 Q. Did he tell you that he wanted to see you again in 30

03:01:08 11 days?

03:01:08 12 A. No, he did not.

03:01:10 13 Q. Did he want to take your blood pressure again?

03:01:12 14 A. No, he did not.

03:01:14 15 Q. Did he tell you he needed to further his examination?

03:01:20 16 A. No, he did not.

03:01:20 17 Q. Did he tell you instead that everything was good and you

03:01:24 18 were perfect?

03:01:24 19 A. He did.

03:01:24 20 Q. There were some questions that Mr. Jones asked about you

03:01:30 21 having a conversation with Special Agent Roelofs and that she

03:01:34 22 showed you an email. Do you remember those questions?

03:01:38 23 A. Yes, I do.

03:01:38 24 Q. At the time that you had that conversation with Special

03:01:42 25 Agent Roelofs, were you listening to the audio clips from your

03:01:46 1 meeting at the time?

03:01:46 2 MR. JONES: Judge, leading, subjective.

03:01:50 3 THE COURT: Sustained.

03:01:50 4 BY MR. HAMMERMAN:

03:01:52 5 Q. At the time you met with Special Agent Roelofs, did she
03:01:56 6 show you any evidence?

03:01:56 7 A. No, she did not.

03:01:58 8 Q. Did she play you any evidence?

03:02:02 9 A. No, she did not.

03:02:02 10 Q. Had you reviewed the audio clips at any time in the
03:02:04 11 immediate proximity of that conversation?

03:02:06 12 A. No, I had not.

03:02:06 13 Q. Have you listened to the audio clips after that?

03:02:08 14 MR. JONES: Judge, I am going to object.

03:02:10 15 THE COURT: Sustained.

03:02:12 16 BY MR. HAMMERMAN:

03:02:12 17 Q. Have you listened to the audio clips in advance of your
03:02:14 18 testimony today?

03:02:16 19 A. Yes, I have.

03:02:16 20 Q. Does listening to audio of your meeting with Dr. Chhibber
03:02:20 21 help refresh your recollection over what the conversations
03:02:22 22 were between you and Dr. Chhibber?

03:02:24 23 MR. JONES: Judge, I would object to the form of
03:02:26 24 these questions.

03:02:26 25 THE COURT: Sustained.

03:02:26 1 BY MR. HAMMERMAN:

03:02:28 2 Q. Do you have a better recollection today having reviewed
03:02:32 3 those audio clips?

03:02:34 4 MR. JONES: Judge, object.

03:02:34 5 THE COURT: Overruled.

03:02:36 6 MR. JONES: Better recollection as to what?

03:02:38 7 THE COURT: Overruled.

03:02:40 8 THE WITNESS: Yes, I do.

03:02:40 9 BY MR. HAMMERMAN:

03:02:42 10 Q. At the time that Dr. Chhibber -- let me rephrase the
03:02:48 11 question.

03:02:48 12 After you had the EKG, at the time you had that EKG,
03:02:58 13 did Dr. Chhibber tell you that you were in good and perfect
03:03:02 14 health?

03:03:02 15 A. Yes, he did.

03:03:04 16 MR. HAMMERMAN: No further questions, your Honor.

03:03:06 17 THE COURT: Anything further?

03:03:06 18 MR. JONES: I do have a couple, Judge.

03:03:08 19 - - -

03:03:08 20 DENNARIS TERRELL COLEMAN, RECROSS-EXAMINATION

03:03:08 21 BY MR. JONES:

03:03:08 22 Q. Wait a minute. Special Agent, Special Agent Kathy -- I
03:03:16 23 mean Ms. Roelofs, Special Agent Roelofs talked to you on
03:03:20 24 March 11th, you couldn't remember any questions about -- you
03:03:26 25 couldn't remember any interaction you had with Dr. Chhibber

03:03:30 1 about the EKG; isn't that true?

03:03:32 2 A. That's correct.

03:03:34 3 Q. And you knew that when Special Agent Roelofs was asking
03:03:38 4 you these questions that these were going to go into an FBI
03:03:42 5 302. You knew that, didn't you?

03:03:44 6 A. No, I did not.

03:03:46 7 Q. Did you think she was just asking these questions for her
03:03:50 8 health?

03:03:50 9 A. No, I did not.

03:03:50 10 MR. HAMMERMAN: Object to the form of the question,
03:03:52 11 your Honor.

03:03:52 12 THE COURT: Overruled.

03:03:52 13 BY MR. JONES:

03:03:54 14 Q. You knew that Special Agent Roelofs was writing 302s
03:03:56 15 regarding this case, didn't you?

03:03:58 16 A. Regarding this case, but not that conversation in
03:04:02 17 particular.

03:04:02 18 Q. And so when she asked you those questions -- and, of
03:04:04 19 course, March 11th, 2011, is a whole lot closer to the
03:04:10 20 incident than today; isn't that true?

03:04:12 21 A. That's true.

03:04:12 22 Q. And it is true, sir, that you set up a return visit with
03:04:28 23 Dr. Chhibber but you never went to that return visit; isn't
03:04:32 24 that right?

03:04:32 25 MR. HAMMERMAN: Objection, your Honor. Beyond

03:04:34 1 redirect.

03:04:34 2 MR. JONES: Judge, he --

03:04:36 3 THE COURT: Overruled.

03:04:36 4 BY MR. JONES:

03:04:36 5 Q. You set up a return visit, and you didn't come back,

03:04:40 6 right?

03:04:40 7 A. I don't recall that.

03:04:42 8 Q. And let's just say this. If you didn't come back to

03:04:46 9 Dr. Chhibber, there would be no way that Dr. Chhibber could

03:04:50 10 tell you about your abnormal spike in your EKG; is that

03:04:54 11 correct?

03:04:54 12 MR. HAMMERMAN: Object to the form of the question.

03:04:56 13 THE COURT: Sustained.

03:04:56 14 BY MR. JONES:

03:04:58 15 Q. Have you had conversations with the government expert in

03:05:04 16 this case about your abnormal spikes?

03:05:06 17 MR. HAMMERMAN: Asked and answered, your Honor.

03:05:08 18 Objection.

03:05:08 19 THE COURT: Sustained.

03:05:08 20 MR. JONES: I don't have anything further, Judge.

03:05:12 21 Wait, whoa, whoa, whoa. Wait a minute. Whoa. Hold

03:05:16 22 on one second.

03:05:32 23 BY MR. JONES:

03:05:32 24 Q. In fact, when you went in to see Dr. Chhibber, you gave a

03:05:34 25 phony name, right?

03:05:36 1 A. That is correct.

03:05:36 2 Q. Phony address, right?

03:05:38 3 A. That is correct.

03:05:40 4 Q. So if he even tried to contact you, it would be through
03:05:44 5 that phony name and phony address; is that correct?

03:05:46 6 A. That would be false. The number I gave him was correct.

03:05:50 7 Q. What number was that?

03:05:50 8 A. That was my cell phone number that's on the paperwork, and
03:05:54 9 he did not call me.

03:05:54 10 Q. Well, you don't know what happened with respect to your
03:05:56 11 address, do you?

03:05:56 12 A. I do not.

03:05:58 13 Q. All right.

03:06:02 14 MR. JONES: I don't have anything further, Judge.

03:06:04 15 THE COURT: Anything else?

03:06:06 16 - - -

03:06:06 17 DENNARIS TERRELL COLEMAN, REDIRECT EXAMINATION

03:06:06 18 BY MR. HAMMERMAN:

03:06:06 19 Q. Special Agent Coleman, did Dr. Chhibber ever try to call
03:06:10 20 you at that phone number?

03:06:10 21 A. No, he did not.

03:06:10 22 Q. Did anyone from Dr. Chhibber's office at all call that
03:06:14 23 phone number to tell you that you had an abnormal EKG?

03:06:16 24 A. No, they did not.

03:06:18 25 MR. HAMMERMAN: No further questions, your Honor.

03:06:20 1 MR. JONES: None, Judge.

03:06:20 2 THE COURT: We better take our break this afternoon
03:06:22 3 while we can. We will take a 15-minute break. The jury is
03:06:26 4 excused.

03:06:32 5 (Short break.)

03:25:00 6 (The following proceedings were had in open court in the
03:25:02 7 presence and hearing of the jury:)

03:25:02 8 THE COURT: Please be seated. Would the new witness
03:25:04 9 stand to be sworn.

03:25:16 10 (Witness sworn.)

03:25:16 11 THE COURT: Please be seated. Would you tell us your
03:25:18 12 full name and spell your last name, please.

03:25:20 13 THE WITNESS: Yes, my name is Kory Bakken. That's
03:25:22 14 B-a-k-k-e-n.

03:25:26 15 - - -

03:25:26 16 KORY BAKKEN, DIRECT EXAMINATION

03:25:26 17 BY MR. HAMMERMAN:

03:25:28 18 Q. Sir, can you tell the members of the jury how you're
03:25:30 19 employed?

03:25:30 20 A. Yes, I am employed as a special agent of the FBI.

03:25:32 21 Q. And how long have you been employed as a special agent
03:25:38 22 with the FBI?

03:25:38 23 A. Approximately seven and a half years.

03:25:40 24 Q. Special Agent Bakken, will you tell the members of the
03:25:42 25 jury what squad you are assigned to with the FBI.

03:25:44 1 A. I'm assigned to squad West RA 3, which is a healthcare
03:25:50 2 fraud squad.

03:25:50 3 Q. What kind of crimes do you investigate as part of that
03:25:54 4 healthcare fraud squad?

03:25:56 5 A. It's white-collar crimes specifically having to do with
03:26:00 6 cases involving health care.

03:26:00 7 Q. Special Agent Bakken, did you become involved in the
03:26:04 8 investigation of Dr. Jaswinder Chhibber?

03:26:08 9 A. Yes, I did.

03:26:10 10 Q. In what capacity?

03:26:10 11 A. I was asked in February 2011 to be a search team leader
03:26:12 12 for a search warrant.

03:26:14 13 Q. And what do you mean to be a search team leader? What
03:26:18 14 does that mean?

03:26:20 15 A. Well, we had a search warrant for a clinic on the South
03:26:22 16 Side of Chicago that was issued the day before. I was asked
03:26:24 17 to be a search team leader, which basically is that I would
03:26:28 18 coordinate members of multi agencies. We had several law
03:26:34 19 enforcement agencies that took part. I would make sure that
03:26:36 20 they all knew what the search warrant was, what it entailed,
03:26:40 21 where we were supposed to go, and what we were supposed to
03:26:42 22 take.

03:26:44 23 Q. Special Agent Bakken, had you been involved in this
03:26:46 24 investigation prior to the search on that date?

03:26:48 25 A. I was not.

03:26:50 1 Q. Is your job that of a search team leader, that of a
03:26:54 2 coordinator or administrator?

03:26:56 3 A. Yes, it was.

03:26:58 4 Q. Where was the search that you're referring to located?

03:27:04 5 A. It was on East 79th Street on the South Side of Chicago,
03:27:08 6 in the 600 block.

03:27:08 7 Q. And what type of institution was it?

03:27:10 8 A. It was a clinic.

03:27:12 9 Q. I have previously handed you, Special Agent Bakken, two
03:27:16 10 photographs that have been marked as Government Exhibit 601
03:27:18 11 and 602. Do you have those in front of you?

03:27:22 12 A. I do.

03:27:22 13 Q. What do those depict, Special Agent Bakken?

03:27:26 14 A. Those depict the site of where we executed the search
03:27:28 15 warrant.

03:27:28 16 Q. And have you seen those photographs before?

03:27:32 17 A. Yes, I have.

03:27:32 18 Q. Do they fairly and accurately depict what was the
03:27:36 19 storefront of the area that was searched on that day?

03:27:40 20 A. Yes, it was snowing on that day, but it does accurately
03:27:42 21 depict it.

03:27:44 22 MR. HAMMERMAN: Your Honor, at this point in time,
03:27:44 23 the government would move to admit what's been marked
03:27:48 24 Government Exhibit 601 and 602.

03:27:50 25 THE COURT: Any objection?

03:27:50 1 MR. JONES: No objection, your Honor.

03:27:50 2 THE COURT: Government Exhibit 601 and 602 are
03:27:50 3 admitted.

03:27:54 4 (Above-mentioned exhibits were received in evidence.)

03:27:54 5 MR. HAMMERMAN: Permission to publish?

03:27:56 6 THE COURT: Yes.

03:27:56 7 BY MR. HAMMERMAN:

03:27:58 8 Q. Special Agent Bakken, we will start with Government
03:28:00 9 Exhibit 601. Is that, once again, a fair and accurate
03:28:08 10 depiction of the site that was searched that day?

03:28:10 11 A. It is.

03:28:12 12 Q. All right. And is that the clinic of J.R. Chhibber that
03:28:16 13 was searched on that day?

03:28:18 14 A. Yes.

03:28:18 15 Q. And let's go to 602. Is that, once again, a picture of
03:28:30 16 the clinic?

03:28:30 17 A. Yes, it is.

03:28:30 18 Q. And you said there were multiple people involved in the
03:28:32 19 search?

03:28:34 20 A. Yes.

03:28:34 21 Q. Approximately how many?

03:28:34 22 A. Over 25.

03:28:34 23 Q. And what was your understanding of what the government was
03:28:38 24 searching for on the date of the search?

03:28:38 25 A. We were looking for mostly patient records; but on top of

03:28:44 1 patient records, we were also looking for business records,
03:28:46 2 financial records, diagnostic test records, things such as
03:28:52 3 that, employee records.

03:28:54 4 Q. And did law enforcement seize those type of records as
03:28:58 5 part of its search on that date?

03:29:00 6 A. Yes, we did.

03:29:02 7 Q. What was done with the records taken?

03:29:04 8 A. We took them to the FBI building for evidence.

03:29:06 9 Q. And approximately, if you could summarize the volume of
03:29:08 10 records that were taken for the members of the jury.

03:29:12 11 A. We took approximately 130 containers of evidence.

03:29:14 12 Q. And when you say "containers," what kind of containers are
03:29:18 13 you talking about?

03:29:18 14 A. It ranged from a couple of plastic storage tubs to mostly
03:29:22 15 banker's boxes and a few brown paper bags.

03:29:26 16 Q. Special Agent Bakken, I want to show you what's been
03:29:30 17 marked as Government Exhibit 310, 320, 330, 340, 350, 360,
03:29:46 18 370, and 395. I believe Government Exhibit 320 and 340 have
03:29:52 19 already been admitted into evidence. I'm going to hand these
03:29:54 20 up to you, Special Agent Bakken.

03:30:04 21 You mentioned that as part of a search, investigating
03:30:08 22 agents seized medical files?

03:30:10 23 A. Yes.

03:30:10 24 Q. Are these the type of medical files that were seized as
03:30:14 25 part of the search?

03:30:16 1 A. Yes, it appears so.

03:30:18 2 Q. In fact, they are patient files, right?

03:30:20 3 A. Correct.

03:30:20 4 Q. And they -- as part of the search, do these files contain
03:30:26 5 information or at least appear to show medical records of
03:30:28 6 patients?

03:30:30 7 A. Yes.

03:30:30 8 Q. And is that why they were taken?

03:30:32 9 A. Yes.

03:30:42 10 MR. HAMMERMAN: At this point in time, your Honor,
03:30:44 11 the government would seek to admit what's been marked as
03:30:46 12 Government Exhibit 310, 330, 350, 360, 370, and 395.

03:30:56 13 MR. JONES: Judge, if we could just see them for just
03:30:58 14 a second?

03:30:58 15 THE COURT: Yes.

03:31:24 16 BY MR. HAMMERMAN:

03:31:26 17 Q. Special Agent Bakken, while counsel reviews the files we
03:31:28 18 discussed, I will move on to my next question.

03:31:30 19 THE COURT: No, wait just a minute.

03:31:32 20 MR. HAMMERMAN: Yes, your Honor.

03:33:38 21 Once again, your Honor, the government would move for
03:33:40 22 the admission of those documents.

03:33:42 23 MR. JONES: No objection, your Honor.

03:33:42 24 THE COURT: All right. Those documents are admitted.

03:33:44 25 (Above-mentioned exhibits were received in evidence.)

03:33:48 1 BY MR. HAMMERMAN:

03:33:52 2 Q. Special Agent Bakken, in addition to patient files, during
03:33:56 3 the search, did investigating agents locate patient
03:34:00 4 registration forms?

03:34:00 5 A. Yes, we did.

03:34:02 6 Q. Generally speaking, what do those patient registration
03:34:06 7 forms look like?

03:34:06 8 A. They are a piece of paper. On top is a title that says
03:34:10 9 Patient Registration Form or New Patient Registration Form,
03:34:12 10 it's dated with a -- it has a date handwritten on it, and then
03:34:18 11 there's names and possibly contact information for those
03:34:22 12 names.

03:34:22 13 Q. In addition, let me show you what's been marked as
03:34:30 14 Government Exhibit 624, 625, and 630.

03:34:40 15 Special Agent Bakken, have you seen these exhibits
03:34:42 16 before?

03:34:42 17 A. Yes, I have.

03:34:52 18 Q. Starting with 630, have you seen -- can you just tell the
03:34:56 19 jury, generally speaking, what that exhibit is comprised of.

03:34:58 20 A. This is a composite exhibit, which means that we didn't
03:35:04 21 find this exhibit in the way that it is now.

03:35:06 22 Q. Is this an exhibit that was put together by law
03:35:10 23 enforcement?

03:35:10 24 A. Yes, that's accurate.

03:35:12 25 Q. Can you tell the members of the jury what this exhibit is

03:35:14 1 comprised of.

03:35:16 2 A. The first page is the patient registration form with
03:35:20 3 approximately 24 names.

03:35:22 4 Q. Okay. And is that on page 22?

03:35:24 5 A. Page 1 of 2.

03:35:28 6 Q. And what are the pages that follow as part of that
03:35:30 7 composite exhibit?

03:35:32 8 A. These are all patient progress reports.

03:35:42 9 Q. And when you say "patient progress reports," where were
03:35:44 10 these particular patient progress reports found?

03:35:46 11 A. The patient progress reports were found in the patient
03:35:48 12 files that we removed from the clinic.

03:35:50 13 Q. How did law enforcement compile these composite exhibits
03:35:54 14 using Government Exhibit 630 as an example?

03:35:56 15 A. One of two ways. We matched up the names that we found on
03:36:04 16 this patient registration form, and we pulled those patient
03:36:10 17 files; or, two, we also looked at the service date that goes
03:36:12 18 along with that exhibit, and we pulled those patient files,
03:36:14 19 and then -- even if their names were not on this list, and
03:36:18 20 then we pulled those records from those files.

03:36:20 21 Q. You will see in addition to the handwritten patient
03:36:22 22 progress reports, there are some what look like typed pages
03:36:28 23 that are in there. Do you see those in Government Exhibit
03:36:32 24 630?

03:36:32 25 A. Yes, I do.

03:36:32 1 Q. Can you tell the members of the jury where those
03:36:34 2 particular pages came from.

03:36:34 3 A. Those were also taken from the patient charts.

03:36:38 4 Q. And why were those particular pages added to these
03:36:42 5 composite exhibits?

03:36:42 6 A. Because a patient progress report was not located within
03:36:46 7 that patient chart for that service date.

03:36:52 8 Q. Did you seek to find printed notes like the ones that are
03:36:56 9 contained within Government Exhibit 630 that had patient
03:37:00 10 information from the same date of service as reflected on
03:37:02 11 page 1 on the page registration form?

03:37:08 12 A. Yes, I did.

03:37:08 13 Q. In the end, do these composite exhibits put together so
03:37:12 14 that either patient forms or those -- I'm sorry, progress
03:37:12 15 notes or those printed summaries from the same dates
03:37:18 16 representing the same patient names that are on the patient
03:37:20 17 registration forms were basically put together?

03:37:22 18 A. Yes.

03:37:22 19 Q. And is that the process that was used to compile
03:37:28 20 Government Exhibit 630, 624, and 625?

03:37:34 21 A. Yes.

03:37:34 22 Q. Did, in fact, law enforcement find progress notes on those
03:37:42 23 printed pages for every name that was on the patient
03:37:44 24 registration form that is pages 1 and 2 of Government Exhibit
03:37:48 25 630?

03:37:48 1 A. We did not find progress reports for every patient in
03:37:54 2 these exhibits.

03:37:54 3 Q. You're talking about the composite exhibits that were put
03:37:58 4 together?

03:38:00 5 A. Correct.

03:38:00 6 Q. In fact, do these composite exhibits just include those
03:38:04 7 progress notes that could be found for the patients that are
03:38:12 8 listed on the form?

03:38:12 9 A. That's accurate.

03:38:12 10 Q. I'd like to show you what we've marked as Government
03:38:22 11 Exhibit 631, 627, and 632. Agent Bakken, are these exhibits,
03:38:36 12 once again, compiled in the same way as 624, 625, and 630?

03:38:42 13 A. Yes.

03:38:44 14 Q. And, once again, was this information that was acquired
03:38:50 15 either directly from the defendant himself or through the
03:38:52 16 search of his office?

03:38:54 17 A. Yes.

03:39:02 18 MR. HAMMERMAN: At this point in time, your Honor,
03:39:04 19 the government would seek to admit what's been marked as
03:39:06 20 Government Exhibit 624, 625, 630, 631, 627, and 632.

03:39:16 21 MR. ORMAN: Your Honor, we will object to some of
03:39:18 22 these and request a sidebar.

03:39:20 23 THE COURT: All right. I will defer ruling on any
03:39:26 24 objected ones until the jury leaves for the day.

03:39:28 25 Are there any that you don't object to so we can

03:39:32 1 proceed with those?

03:39:34 2 MR. ORMAN: Yes, Judge. There is no objection to 624
03:39:36 3 and no objection to Government's 625.

03:39:42 4 THE COURT: All right. Government Exhibit 624 and
03:39:44 5 625 are admitted. The admissibility of the other documents is
03:39:50 6 deferred until later today.

03:39:52 7 (Above-mentioned exhibits were received in evidence.)

03:39:54 8 BY MR. HAMMERMAN:

03:40:16 9 Q. Special Agent Bakken, I am going to hand you what's now
03:40:18 10 been marked as Government Exhibit 620.

03:40:32 11 Can you tell the members of the jury what Government
03:40:34 12 Exhibit 620 is.

03:40:36 13 A. Yes, these are procedure logs.

03:40:38 14 Q. Were logs such as these recovered from the search of
03:40:42 15 Dr. Chhibber's office that you referred to earlier in your
03:40:44 16 testimony today?

03:40:44 17 A. Yes, they were.

03:40:46 18 Q. Now, have you conducted an audit to see if all the pages
03:40:50 19 are the same as the ones that were taken in the search?

03:40:52 20 A. No, I haven't.

03:40:54 21 Q. But suffice it to say, were procedure logs such as this
03:41:02 22 obtained in the search?

03:41:04 23 A. Yes.

03:41:04 24 Q. Is it your understanding that certain procedure logs were
03:41:06 25 also obtained from the defendant directly?

03:41:08 1 A. That's my understanding.

03:41:10 2 Q. Special Agent Bakken, I am now going to show you what's
03:41:28 3 been marked as Government Exhibit 650. It's three folders,
03:41:36 4 one blue, two orange, that are entitled Daily Log Ultrasound
03:41:42 5 and then Daily Log Ultrasound and Daily Log -- Ultrasound Log
03:41:46 6 Reports and Echo US Log Reports.

03:41:52 7 Once again, have you seen this exhibit before,
03:41:54 8 Special Agent Bakken?

03:41:54 9 A. Yes, I have.

03:41:56 10 Q. Once again, were these types of materials obtained in the
03:42:02 11 search of Dr. Chhibber's office?

03:42:02 12 A. Yes.

03:42:04 13 Q. Finally, I'd like to show you what's been marked as
03:42:08 14 Government Exhibit 628 and 629. You mentioned before that as
03:42:28 15 part of the search, Special Agent, law enforcement when
03:42:34 16 conducting the search retrieved certain business and patient
03:42:36 17 records?

03:42:36 18 A. Yes.

03:42:36 19 Q. Were some of those records combined in the form that they
03:42:40 20 were found?

03:42:40 21 A. Yes, such as these exhibits.

03:42:42 22 Q. In fact, is it your understanding that these exhibits that
03:42:46 23 have been marked as Government Exhibit 628 and 629 were
03:42:48 24 records that were obtained as part of the search?

03:42:50 25 A. Yes.

03:42:54 1 MR. HAMMERMAN: Your Honor, at this point in time,
03:42:56 2 the government would seek to admit Government Exhibit 628 and
03:42:58 3 629.

03:43:00 4 THE COURT: All right. Any objection to 628 and 629?

03:43:04 5 MR. ORMAN: Yes.

03:43:04 6 THE COURT: All right. Ruling is reserved.

03:43:10 7 MR. HAMMERMAN: I have no further questions, your
03:43:16 8 Honor.

03:43:16 9 THE COURT: Cross-examination?

03:43:18 10 - - -

03:43:18 11 KORY BAKKEN, CROSS-EXAMINATION

03:43:18 12 BY MR. ORMAN:

03:43:48 13 Q. Special Agent, are you positive that all of the exhibits,
03:43:54 14 whether objected to or not, came from the search that you did?

03:43:58 15 A. I am positive that these are the types of records that we
03:44:00 16 removed from the search location.

03:44:02 17 Q. I don't understand what you mean when you say, "These are
03:44:06 18 the types of records." Are these the documents, these
03:44:10 19 documents, did they come from your search?

03:44:14 20 A. These documents came from boxes that we removed from the
03:44:16 21 search.

03:44:18 22 Q. The first time you saw these documents was when?

03:44:22 23 A. At the search location, I saw several of these documents.
03:44:28 24 I also saw these documents in the office of the U.S.
03:44:30 25 Attorney's Office.

03:44:30 1 Q. Who put these exhibits together?

03:44:32 2 A. Other agents.

03:44:32 3 Q. You didn't do that?

03:44:34 4 A. No.

03:44:34 5 Q. You talked about 130 boxes of documents?

03:44:40 6 A. Yes, 130 containers, yes.

03:44:44 7 Q. About how many documents are in a box?

03:44:46 8 A. It varies.

03:44:46 9 Q. High and low, tell me.

03:44:50 10 A. I couldn't. I couldn't estimate. Some of the patient

03:44:52 11 files were a quarter inch thick, some of them were 3 inches

03:44:56 12 thick.

03:44:56 13 Q. So what you're telling me is these few documents were

03:45:00 14 selected by somebody and all the rest of the documents are

03:45:04 15 sitting somewhere else?

03:45:06 16 A. Yes.

03:45:06 17 Q. Where?

03:45:08 18 A. At the FBI.

03:45:10 19 Q. So those 130 boxes of documents are piled up over at the

03:45:14 20 FBI?

03:45:16 21 A. They are not piled up there. They are kept according to

03:45:18 22 our evidence control rules.

03:45:20 23 Q. Who made the selection to choose these particular

03:45:22 24 documents?

03:45:22 25 A. I don't know that answer.

03:45:26 1 Q. Do you know what any of these documents mean?

03:45:30 2 A. I have never conducted any investigation myself on this
03:45:34 3 except for conducting the search warrant.

03:45:36 4 Q. So let me get this straight. Somebody, and you don't know
03:45:42 5 who, selected a small portion of a great deal of documents,
03:45:44 6 put them together, marked them as exhibits, and brought them
03:45:48 7 here today; is that correct?

03:45:50 8 A. Yes.

03:46:00 9 MR. ORMAN: No more questions, Judge.

03:46:02 10 THE COURT: Redirect?

03:46:04 11 MR. HAMMERMAN: Yes, your Honor.

03:46:06 12 - - -

03:46:06 13 KORY BAKKEN, REDIRECT EXAMINATION

03:46:06 14 BY MR. HAMMERMAN:

03:46:06 15 Q. With respect to composite exhibits that were presented to
03:46:08 16 you, Special Agent Bakken, did you go back to look in the
03:46:10 17 patient files to verify that the documents that were part of
03:46:12 18 those composites in fact came out of patient files with the
03:46:14 19 same names?

03:46:16 20 A. Yes, I did.

03:46:18 21 Q. Though you didn't put those composite exhibits together,
03:46:24 22 you did seek to verify that, in fact, those progress notes
03:46:26 23 came out of patient files with the same names; is that right?

03:46:28 24 A. Yes, personally over the last few names.

03:46:30 25 Q. And those particular patient files that you're talking

03:46:34 1 about came from the search of Dr. Chhibber's office; is that
03:46:36 2 correct?

03:46:36 3 A. That's correct.

03:46:36 4 Q. And not, you know, because you were the team leader of
03:46:40 5 that search; is that correct?

03:46:40 6 A. That's correct.

03:46:40 7 Q. Okay. With respect to the question Mr. Orman asked about
03:46:46 8 have you gone back and verified that these all came from the
03:46:48 9 search, do you remember that question?

03:46:50 10 A. Yes.

03:46:50 11 Q. Is it your understanding that some, for example, patient
03:46:56 12 registration sheets were also provided to the government as
03:46:58 13 part of its investigation directly from the defendant himself
03:47:02 14 at times?

03:47:02 15 A. That's my understanding.

03:47:04 16 Q. And is it your understanding that those were the documents
03:47:06 17 that you used to verify -- those patient registration forms
03:47:12 18 were then used as part of the verification process of these
03:47:16 19 composite exhibits we're talking about?

03:47:18 20 A. That's correct.

03:47:18 21 Q. Also with the procedure logs, you stated before that
03:47:22 22 procedure logs were obtained through the search; is that
03:47:24 23 accurate?

03:47:24 24 A. Yes.

03:47:24 25 Q. And also from the defendant himself?

03:47:28 1 A. Yes.

03:47:28 2 Q. All right. And I think I asked you before, have you done
03:47:34 3 an audit to determine which patients came from which?

03:47:38 4 MR. ORMAN: Objection, Judge. He did ask that.

03:47:40 5 THE COURT: Yes, sustained.

03:47:40 6 MR. HAMMERMAN: No further questions, your Honor.

03:47:42 7 THE COURT: Anything further?

03:47:46 8 MR. ORMAN: No further questions.

03:47:48 9 THE COURT: Thank you. You are excused.

03:47:52 10 MR. HAMMERMAN: Your Honor, we are calling our next
03:47:54 11 witness. May I have an opportunity to retrieve all the
03:47:56 12 exhibits?

03:47:58 13 THE COURT: Yes. Certainly.

03:47:58 14 MR. HAMMERMAN: Thank you.

03:48:42 15 (Witness sworn.)

03:48:42 16 THE COURT: Please be seated. Would you state your
03:48:48 17 full name and spell your last name.

03:48:50 18 THE WITNESS: Twahki Rhodes, R-h-o-d-e-s.

03:48:58 19 - - -

03:48:58 20 TWAHKI RHODES, DIRECT EXAMINATION

03:48:58 21 BY MR. HAMMERMAN:

03:49:08 22 Q. Good afternoon, Ms. Rhodes.

03:49:10 23 A. Good afternoon.

03:49:10 24 Q. Please tell the members of the jury where you live.

03:49:22 25 A. The South Side of Chicago.

03:49:24 1 Q. And can you tell the members of the jury how old you are,
03:49:26 2 ma'am.

03:49:26 3 A. Thirty-nine.

03:49:28 4 Q. How are you currently employed, Ms. Rhodes?

03:49:30 5 A. I work at Metro South Health Center.

03:49:34 6 Q. And where is the Metro South Health Center located?

03:49:36 7 A. On the South Side of Chicago, Stony Island.

03:49:40 8 Q. In the Stony Island neighborhood?

03:49:46 9 A. Avalon.

03:49:46 10 Q. Avalon? Okay.

03:49:46 11 And what do you do at Metro South, ma'am?

03:49:48 12 A. I am a registered nurse's assistant.

03:49:52 13 Q. And how long have you worked for Metro South?

03:49:54 14 A. Since July of 2011.

03:50:00 15 THE COURT: I'm sorry. What year?

03:50:02 16 THE WITNESS: July of 2011.

03:50:06 17 MR. JONES: Judge, I was just wondering, I am having
03:50:10 18 some difficulty. I don't know if that speaker works.

03:50:12 19 THE COURT: Yes. Could you project your voice and
03:50:14 20 sit forward a little bit, please? The chair I am afraid
03:50:18 21 doesn't move. You will have to lean forward.

03:50:22 22 BY MR. HAMMERMAN:

03:50:22 23 Q. Okay. Can you just speak into the microphone.

03:50:24 24 A. All right.

03:50:26 25 Q. Thank you, Ms. Rhodes.

03:50:26 1 Can you tell the members of the jury how you were
03:50:28 2 employed prior to working for Metro South.
03:50:30 3 A. I worked for Dr. Chhibber.
03:50:32 4 Q. How long did you work for Dr. Chhibber?
03:50:34 5 A. Two and a half years.
03:50:38 6 Q. And what was the position that you had when you worked for
03:50:40 7 him?
03:50:42 8 A. Registered medical assistant.
03:50:44 9 Q. And where was Dr. -- where did you work for Dr. Chhibber,
03:50:48 10 at what location?
03:50:48 11 A. That was located on the South Side of Chicago also.
03:50:50 12 Q. And on what street, ma'am?
03:50:52 13 A. We were right on 79th, a few blocks off of Cottage Grove.
03:50:58 14 Q. At some point, did that clinic move?
03:51:00 15 A. Yes.
03:51:00 16 Q. And where did it move to?
03:51:02 17 A. It moved to -- the one on Stony Island, 82- -- 8348 South
03:51:10 18 Stony Island.
03:51:12 19 Q. Is that the same location where Metro South is currently
03:51:14 20 located?
03:51:14 21 A. Yes, it is.
03:51:16 22 Q. Can you tell the members of the jury when that change
03:51:20 23 occurred, when you moved from the 79th Street location to the
03:51:24 24 Stony Island location.
03:51:24 25 A. That was about April of 2011.

03:51:28 1 Q. And at the time that your employment moved from the 79th
03:51:36 2 Street location to the 83rd Street location, were you still
03:51:40 3 employed by Dr. Chhibber?

03:51:40 4 A. Yes, I was.

03:51:42 5 Q. You said that you worked for Dr. Chhibber for two,
03:51:50 6 two-plus years. Would you recognize him if you saw him again,
03:51:52 7 Ms. Rhodes?

03:51:52 8 A. Yes.

03:51:54 9 MR. JONES: I'm stipulating, Judge.

03:51:56 10 THE COURT: Identity is not an issue.

03:51:58 11 MR. HAMMERMAN: Thank you, your Honor.

03:51:58 12 BY MR. HAMMERMAN:

03:52:00 13 Q. Ms. Rhodes, would you tell the members of the jury how far
03:52:04 14 you went in school.

03:52:04 15 A. About four years of college.

03:52:08 16 Q. And do you have any degrees or certificates as a result of
03:52:12 17 your education?

03:52:14 18 A. Yes, I have certificates.

03:52:16 19 Q. Can you tell the members of the jury what certificates you
03:52:16 20 have.

03:52:18 21 A. I am a certified nurse's assistant, a registered
03:52:24 22 phlebotomist, and a registered medical assistant.

03:52:28 23 Q. And did you obtain those certificates through your
03:52:32 24 education?

03:52:34 25 A. Yes, I did.

03:52:34 1 Q. How did you come to work for Dr. Chhibber?

03:52:42 2 A. My mother and my grandmother were patients of his, and I
03:52:48 3 asked him about a position there.

03:52:48 4 Q. Had you been working as a medical assistant prior to
03:52:52 5 working for Dr. Chhibber?

03:52:54 6 A. Yes.

03:52:54 7 Q. For approximately how long?

03:52:56 8 A. For about four years.

03:53:04 9 Q. And when, in your best estimate, did you actually begin
03:53:10 10 working for Dr. Chhibber?

03:53:12 11 A. The year of 2009.

03:53:14 12 Q. And what was the name of the clinic that he had at that
03:53:20 13 time?

03:53:20 14 A. Cottage Grove Medical.

03:53:22 15 Q. What was your title while working for Dr. Chhibber?

03:53:26 16 A. Medical assistant.

03:53:28 17 Q. How much were you paid by Dr. Chhibber when you first
03:53:30 18 started working for him?

03:53:32 19 A. \$9 an hour.

03:53:34 20 Q. When you stopped working for Dr. Chhibber in July of 2011,
03:53:38 21 how much were you paid?

03:53:38 22 A. About \$10 an hour.

03:53:42 23 Q. You said that the Metro South clinic that you are
03:53:48 24 currently working at is the same location as Dr. Chhibber's
03:53:52 25 clinic was at when it moved; is that correct?

03:53:54 1 A. That's correct

03:53:54 2 Q. Do you have an understanding of how that clinic switched
03:53:58 3 from Dr. Chhibber to Metro South?

03:54:00 4 A. No, I don't have a clear understanding of how it actually
03:54:02 5 switched.

03:54:02 6 Q. Well, did you have any conversations with anybody about
03:54:06 7 that switch?

03:54:08 8 A. Yes, I did.

03:54:08 9 Q. Did you have a conversation with Dr. Chhibber about that
03:54:10 10 switch?

03:54:10 11 A. Yes.

03:54:12 12 Q. What did Dr. Chhibber tell you?

03:54:14 13 MR. JONES: Foundation, Judge.

03:54:14 14 THE COURT: Sustained.

03:54:16 15 BY MR. HAMMERMAN:

03:54:16 16 Q. Well, you said the switch occurred in April of 2011?

03:54:20 17 A. Yes.

03:54:20 18 Q. When did that conversation with Dr. Chhibber occur,
03:54:24 19 Ms. Rhodes?

03:54:26 20 A. Repeat that question. Did I say that the switch was in
03:54:36 21 April 2011?

03:54:36 22 Q. Well, let's start there. When did the switch from Cottage
03:54:42 23 Grove Community Center or -- I apologize. Let me rephrase.

03:54:46 24 The 83rd Street clinic you said switched ownership
03:54:52 25 from Dr. Chhibber to Metro South. When did that occur?

03:54:54 1 A. That occurred in July or June, the end of June.

03:54:58 2 Q. Of what year?

03:54:58 3 A. 2009.

03:55:00 4 Q. Did you have a conversation with Dr. Chhibber about the
03:55:04 5 switch?

03:55:04 6 A. Yes.

03:55:04 7 Q. In relation to the timing of that switch, when did that
03:55:08 8 conversation with Dr. Chhibber occur?

03:55:10 9 A. That occurred in the end of June 2011.

03:55:14 10 Q. And where did that conversation occur?

03:55:16 11 A. That occurred at the Stony Island location.

03:55:20 12 Q. Can you now tell the members of the jury what Dr. Chhibber
03:55:24 13 told you about the switch in ownership at that time.

03:55:26 14 MR. JONES: Judge, only who is present.

03:55:28 15 THE COURT: Sustained.

03:55:30 16 BY MR. HAMMERMAN:

03:55:30 17 Q. Okay. Ms. Rhodes, the conversation that you're referring
03:55:34 18 to where Dr. Chhibber and you spoke inside the clinic?

03:55:38 19 A. Yes.

03:55:38 20 Q. Was there anyone else present at the time?

03:55:40 21 A. A co-worker.

03:55:42 22 Q. Who was the co-worker?

03:55:42 23 A. Tyanna Holmes.

03:55:46 24 Q. Other than Tyanna Holmes, was anyone else present for this
03:55:50 25 conversation?

03:55:50 1 A. No.

03:55:50 2 Q. What did Dr. Chhibber tell you in the conversation at
03:55:52 3 which he explained the switch of that facility from his
03:55:58 4 ownership to Metro South?

03:56:00 5 MR. JONES: Judge, I object to the leading nature of
03:56:02 6 these questions.

03:56:02 7 THE COURT: Sustained.

03:56:04 8 BY MR. HAMMERMAN:

03:56:04 9 Q. Can you please tell the members of the jury about the
03:56:06 10 conversation that you had with Dr. Chhibber about that switch.

03:56:10 11 A. At the end of the day, the doctor asked us to come into
03:56:14 12 his office, and he sat us down, and he said that there would
03:56:20 13 be another facility taking over the clinic and that we will be
03:56:26 14 employed by them, he spoke with them, and they were going to
03:56:28 15 give us a position with them, and he explained to us that they
03:56:32 16 will be in to have a conversation with us.

03:56:34 17 Q. Did you ever have to interview with Metro South?

03:56:38 18 A. Yes, I did.

03:56:38 19 Q. All right. And did that happen before or after this
03:56:44 20 conversation?

03:56:44 21 A. After.

03:56:44 22 Q. Did you have an understanding, based on that interview, of
03:56:48 23 whether or not you had been recommended for a position with
03:56:52 24 Metro South?

03:56:54 25 MR. JONES: Objection to the speculation, Judge.

03:56:56 1 THE COURT: Could you rephrase, please?

03:57:00 2 MR. HAMMERMAN: Yes, your Honor.

03:57:00 3 BY MR. HAMMERMAN:

03:57:04 4 Q. Ms. Rhodes, did you have an understanding, you, did you
03:57:08 5 have an understanding yourself, whether or not you had been
03:57:12 6 recommended for the position with Metro South?

03:57:16 7 MR. JONES: Objection, Judge. If there is no
03:57:16 8 conversation, it's speculation and hearsay.

03:57:20 9 THE COURT: Sustained.

03:57:20 10 BY MR. HAMMERMAN:

03:57:22 11 Q. Based -- you said you had to interview with Metro South;
03:57:28 12 is that correct, Ms. Rhodes?

03:57:30 13 A. That's correct.

03:57:30 14 Q. And when you interviewed with Metro South, did you have a
03:57:32 15 conversation regarding your employment history?

03:57:36 16 A. Yes.

03:57:36 17 Q. Did that conversation also address your employment history
03:57:40 18 with Dr. Chhibber?

03:57:42 19 A. Yes.

03:57:42 20 Q. Did you have a basis -- let me go back to the conversation
03:57:48 21 you had with Dr. Chhibber before you had your interview with
03:57:52 22 Metro South.

03:57:52 23 Based on your conversation with Dr. Chhibber, did you
03:57:58 24 have an understanding of whether you had been recommended for
03:58:02 25 the Metro South position?

03:58:02 1 MR. JONES: Judge, I object.

03:58:04 2 THE COURT: Sustained.

03:58:04 3 BY MR. HAMMERMAN:

03:58:08 4 Q. You were hired by Metro South; is that right?

03:58:10 5 A. That's correct.

03:58:12 6 Q. And what was the rate of pay that you received from Metro
03:58:16 7 South?

03:58:16 8 A. \$17 an hour.

03:58:18 9 Q. When you spoke to Dr. Chhibber about the switch, did he
03:58:30 10 explain --

03:58:32 11 MR. HAMMERMAN: Well, let me strike that, your Honor.
03:58:34 12 I apologize.

03:58:34 13 BY MR. HAMMERMAN:

03:58:36 14 Q. I want to go back and ask you some questions about the
03:58:40 15 79th Street clinic, the one that was down on Cottage Grove or
03:58:44 16 off of Cottage Grove.

03:58:44 17 Can you explain to the members of the jury what that
03:58:48 18 clinic looked like, what it was?

03:58:50 19 A. The clinic was a front, basically like a front store kind
03:58:58 20 of clinic. When you walk into the clinic, there is a waiting
03:59:02 21 area for the patients. Right there to the right side, there
03:59:06 22 is the office where me and my co-workers would answer the
03:59:12 23 phone, schedule patients. There was about six exam rooms
03:59:16 24 going down the hall to the -- that would be the right side.
03:59:20 25 On the left side towards the end of the hall, you have our

03:59:24 1 file room and the laboratory and then a patient restroom. In
03:59:30 2 the back off to the right, there is a section leading to our
03:59:36 3 cafeteria, and then the office, the doctor's office.

03:59:38 4 Q. And who else was employed at Dr. Chhibber's clinic at the
03:59:44 5 time that you worked for him?

03:59:44 6 A. At the time I worked for him, there was Tyanna Holmes --
03:59:54 7 are you talking about the entire time?

03:59:54 8 Q. The entire time, ma'am.

03:59:56 9 A. There was Tyanna Holmes, Dena Hopkins, Fahad, Dr. B, Dr.
04:00:10 10 Joshi, Faith Washington.

04:00:12 11 Q. And what was -- you said that you were a medical
04:00:14 12 assistant?

04:00:14 13 A. Yes.

04:00:14 14 Q. What did these other individuals do for Dr. Chhibber
04:00:18 15 during the time that you worked for him, what were their
04:00:22 16 titles?

04:00:22 17 A. We had medical assistant, a doctor.

04:00:28 18 Q. Let me rephrase my question.

04:00:30 19 You mentioned Dena Hopkins. What did she do?

04:00:36 20 A. She did the billing and answered phones and scheduled.

04:00:40 21 Q. And Tyanna Holmes, what did she do?

04:00:42 22 A. She did lab work, she took vitals, did charting, answered
04:00:52 23 phones, scheduled.

04:00:54 24 Q. Faith Washington, what was her job at Dr. Chhibber's
04:00:58 25 clinic?

04:00:58 1 A. She did nerve conductivity test.

04:01:04 2 MR. JONES: Judge, I'm sorry. I just couldn't hear
04:01:06 3 that.

04:01:10 4 THE COURT: Could the reporter read back.

04:01:10 5 (Record read.)

04:01:10 6 BY MR. HAMMERMAN:

04:01:10 7 Q. Did she do other things -- I apologize.

04:01:14 8 THE COURT: You're going to have to project your
04:01:16 9 voice a little more. I have a hard time hearing you
04:01:18 10 sometimes.

04:01:20 11 BY MR. HAMMERMAN:

04:01:20 12 Q. Speak into the microphone.

04:01:22 13 Did Faith Washington do anything else, Ms. Rhodes?

04:01:24 14 A. Sometimes she would help us with taking bios and charting.

04:01:30 15 Q. And you mentioned a gentleman by the name of Fahad. Is
04:01:34 16 that his first name or last name?

04:01:34 17 A. I just know him as Fahad. I am guessing first name.

04:01:38 18 Q. What did he do at Dr. Chhibber's clinic?

04:01:42 19 A. He was an ultrasound tech.

04:01:44 20 Q. You mentioned Dr. B.

04:01:48 21 A. Yes.

04:01:48 22 Q. Who was Dr. B?

04:01:50 23 A. An ultrasound tech.

04:01:52 24 Q. And you mentioned a Dr. Joshi?

04:01:54 25 A. Yes.

04:01:54 1 Q. Who was Dr. Joshi?

04:01:56 2 A. He was a physician.

04:01:58 3 Q. Now, during the days that you worked for Dr. Chhibber at
04:02:02 4 that 79th Street clinic, how many physicians were on staff on
04:02:06 5 any one day?

04:02:08 6 A. One.

04:02:08 7 Q. You mentioned a Dr. Joshi. Did he work any of the same
04:02:14 8 days as Dr. Chhibber?

04:02:16 9 A. No.

04:02:18 10 Q. What days did you work at the clinic when it was on the
04:02:24 11 79th Street location, Ms. Rhodes?

04:02:24 12 A. Monday, Tuesday, Thursday and Friday.

04:02:30 13 Q. And on those days, who was the physician that was on
04:02:32 14 staff?

04:02:32 15 A. Dr. Chhibber.

04:02:32 16 Q. What day did Dr. Joshi work?

04:02:38 17 A. Wednesday.

04:02:38 18 Q. So did you ever really work with Dr. Joshi?

04:02:42 19 A. No, not really.

04:02:44 20 Q. What days -- let me ask you this. When did the clinic
04:02:48 21 open?

04:02:50 22 A. We opened at 9:00.

04:02:52 23 Q. And what time did patients arrive at that clinic?

04:02:56 24 A. 9:00.

04:02:58 25 Q. What time, in your experience, did Dr. Chhibber arrive at

04:03:06 1 the clinic?

04:03:06 2 A. It varied; between 10:00, 10:30, sometimes 11:00.

04:03:20 3 Q. Did he ever come after 11:00?

04:03:24 4 A. Yes, sometimes he did.

04:03:24 5 Q. In your experience, how often in the two years that you
04:03:28 6 were there was he there before 10:00 o'clock?

04:03:32 7 A. I would say -- you said before 10:00?

04:03:42 8 Q. Yes, ma'am.

04:03:42 9 A. Once out of a week, I guess. Once out of a week.

04:03:50 10 Q. And how often was he there after 11:00?

04:03:52 11 A. I would say once out of a week.

04:03:58 12 Q. What did you do as a medical assistant working for

04:04:14 13 Dr. Chhibber?

04:04:16 14 A. I answered phones, I scheduled patients, I did the patient
04:04:18 15 exams, took vital signs, I did charting and lab work.

04:04:24 16 Q. Well, let's start with charting. What does that mean when
04:04:26 17 you say, "I did charting"?

04:04:28 18 A. Charting would be if a new patient came, we would have to
04:04:34 19 get a chart together for them putting their lab work and
04:04:38 20 things, things that go inside of the chart, which would be lab
04:04:42 21 work, their progress notes, any diagnostic tests, and anything
04:04:50 22 that their patient history would go inside the chart, so we
04:04:54 23 would get that together for them. And when any tests were
04:04:58 24 done, we would put those into the chart.

04:05:00 25 Q. Did the Cottage Grove Community Medical Clinic maintain

04:05:04 1 charts for all its patients?

04:05:06 2 A. Yes, we did.

04:05:08 3 Q. I want to show you a chart that's been marked as

04:05:10 4 Government Exhibit 340, which has been admitted into evidence.

04:05:22 5 Ms. Rhodes, that is a patient chart in the name of

04:05:26 6 Tiffany Shirley-Terrell. Do you see that?

04:05:28 7 A. Yes.

04:05:28 8 Q. Is that the type of chart that you're referring to?

04:05:32 9 A. Yes, it is.

04:05:34 10 Q. Is that the type of chart that you were responsible for

04:05:38 11 overseeing as part of your charting work?

04:05:40 12 A. Yes.

04:05:40 13 Q. And through your work in which you did charting, were you

04:05:44 14 responsible for being able to read portions of this chart?

04:05:48 15 A. Yes, I was.

04:05:48 16 Q. Through your experience working for Dr. Chhibber, are you

04:05:52 17 familiar with his handwriting?

04:05:56 18 A. Yes.

04:05:56 19 Q. Were you required to read his handwriting?

04:05:58 20 A. Yes.

04:05:58 21 Q. Is that an integral part of your job?

04:06:02 22 A. Yes.

04:06:02 23 Q. Is that something that you did on a daily basis?

04:06:04 24 A. Yes, it is.

04:06:04 25 Q. I am going to show you, Ms. Rhodes, what's been marked as

04:06:20 1 Government Exhibit 300. Take a look at that exhibit.

04:06:30 2 Ms. Rhodes, you met with the government before to
04:06:32 3 prepare for your testimony; is that right?

04:06:32 4 A. Yes.

04:06:34 5 Q. And during that preparation, you looked over some
04:06:36 6 exhibits; is that right?

04:06:36 7 A. Yes.

04:06:36 8 Q. Did you look over Government Exhibit 300?

04:06:40 9 A. No, I did not.

04:06:42 10 Q. You never looked at these progress notes before?

04:06:44 11 A. Yes.

04:06:44 12 MR. ORMAN: Objection, your Honor. Asked and
04:06:46 13 answered.

04:06:46 14 THE COURT: Sustained.

04:06:48 15 BY MR. HAMMERMAN:

04:06:48 16 Q. Have you looked at progress notes as part of your
04:06:50 17 preparation for your testimony today?

04:06:52 18 A. Yes.

04:06:52 19 Q. All right. Go through the pages that make up Government
04:06:56 20 Exhibit 300.

04:07:12 21 Ms. Rhodes, are these the type of progress notes that
04:07:16 22 you reviewed before during your testimony preparation?

04:07:18 23 A. Yes.

04:07:18 24 Q. And, in fact, are these the types of progress notes that
04:07:22 25 you would have to review as part of your employment with

04:07:26 1 Dr. Chhibber?

04:07:26 2 A. That's correct.

04:07:26 3 Q. Ms. Rhodes, starting on the first page --

04:07:36 4 MR. HAMMERMAN: Well, actually, your Honor, at this
04:07:38 5 point in time, the government would move to admit what's been
04:07:42 6 marked as Government Exhibit 300.

04:07:44 7 THE COURT: Any objection?

04:07:46 8 MR. ORMAN: Yes, your Honor.

04:07:46 9 THE COURT: Objection is deferred.

04:07:48 10 MR. HAMMERMAN: Your Honor, may we be heard at
04:07:50 11 sidebar briefly?

04:07:50 12 THE COURT: Not at this point. If you have other
04:07:52 13 questions to ask the witness, after the jury is excused, we
04:07:56 14 will discuss it.

04:07:58 15 BY MR. HAMMERMAN:

04:07:58 16 Q. Ms. Rhodes, I'm going to show you now what's been marked
04:08:00 17 as Government Exhibit 310, 330, 320, 360, 370, and 395.
04:08:22 18 Starting with Government Exhibit 310, will you find the
04:08:32 19 progress note in that chart.

04:08:58 20 Do you see the progress note, ma'am?

04:09:00 21 A. Yes.

04:09:00 22 Q. Is that a progress note that's there in the name of Louis
04:09:12 23 Teague?

04:09:12 24 A. Yes, it is.

04:09:18 25 Q. Have you seen this type of progress note before?

04:09:20 1 A. Yes.

04:09:20 2 Q. Do you recognize the handwriting on this progress note?

04:09:22 3 A. Yes.

04:09:22 4 Q. I'm going to ask you to turn to Government Exhibit 340,
04:09:26 5 which is the first one I handed to you, which is the patient
04:09:28 6 chart in the name of Tiffany Shirley-Terrell.

04:09:44 7 Do you see that progress note?

04:09:44 8 A. Yes.

04:09:44 9 Q. And is the progress note of Tiffany Shirley-Terrell, do
04:09:50 10 you recognize the handwriting on this chart?

04:09:52 11 A. Yes, I do.

04:09:52 12 Q. I would like to review the handwriting on it with you.

04:09:56 13 Going through the progress note, do you see the
04:09:58 14 handwriting in the lower section under the diagnosis section?

04:10:02 15 A. Yes.

04:10:02 16 Q. Do you recognize that handwriting?

04:10:06 17 A. Yes, I do.

04:10:06 18 Q. Was it your job to be able to read the diagnosis section
04:10:10 19 of a progress note while working at the Cottage Grove
04:10:14 20 Community Medical Clinic?

04:10:14 21 A. Yes.

04:10:14 22 Q. Whose handwriting is that?

04:10:14 23 A. Dr. Chhibber's.

04:10:16 24 Q. Do you see the section on the left-hand side here next to
04:10:22 25 the notations for HEENT, do you see that handwriting?

04:10:26 1 A. Yes.

04:10:26 2 Q. Do you recognize the handwriting, Ms. Rhodes?

04:10:28 3 A. Yes.

04:10:28 4 Q. As part of your job, did you have to recognize the

04:10:32 5 handwriting on these charts?

04:10:34 6 A. Yes.

04:10:34 7 Q. Whose handwriting is that?

04:10:34 8 A. Dr. Chhibber's.

04:10:36 9 Q. Now, as part of your job, did you generally review this

04:10:38 10 section, or do you just recognize the handwriting?

04:10:42 11 A. I just recognize the handwriting.

04:10:42 12 Q. Going to the right-hand section next to that where it

04:10:46 13 says, TB skin test, diabetes, echo, carotid. Do you see that?

04:10:50 14 A. Yes.

04:10:52 15 Q. Do you recognize that handwriting?

04:10:52 16 A. Yes.

04:10:52 17 Q. Whose handwriting is that, Ms. Rhodes?

04:10:56 18 A. Dr. Chhibber's.

04:10:56 19 Q. Once again, was this handwriting that you would have to be

04:10:58 20 able to recognize?

04:11:00 21 A. Yes.

04:11:00 22 Q. Is that handwriting that would you actually have to read

04:11:02 23 on a daily basis while working for Dr. Chhibber?

04:11:04 24 A. Yes. Yes.

04:11:04 25 Q. Is this section of a progress note a section that would

04:11:08 1 you read on a daily basis working for Dr. Chhibber?

04:11:12 2 A. Yes.

04:11:12 3 Q. Looking at the top of the chart, there is a section where

04:11:14 4 the patient's name is. Do you see that?

04:11:16 5 A. Yes.

04:11:16 6 Q. Now, is that Dr. Chhibber's handwriting?

04:11:18 7 A. No.

04:11:18 8 Q. Underneath that, though, where it says, Chief complaint,

04:11:22 9 there is handwriting written there?

04:11:24 10 A. Um-hmm.

04:11:24 11 Q. Do you recognize that handwriting, ma'am?

04:11:26 12 A. Yes, I do.

04:11:26 13 Q. Whose is that?

04:11:28 14 A. You said whose is it?

04:11:30 15 Q. Yes. In this section here.

04:11:32 16 A. Dr. Chhibber's.

04:11:34 17 Q. There's also a line here where it says, Smoking, gen exam,

04:11:40 18 HT, weight, BP, pulse, RR, temp, et cetera. Do you see that

04:11:44 19 line?

04:11:44 20 A. Yes.

04:11:46 21 Q. Do you recognize -- first of all, do you recognize that

04:11:50 22 section of a progress note?

04:11:52 23 A. Yes.

04:11:52 24 Q. What was that section of a progress note?

04:11:52 25 A. That is the section where we would do the vitals when the

04:11:58 1 patient first came.

04:12:00 2 Q. Now, when you say, "We would do the vitals," who is the
04:12:04 3 "we" you're talking about?

04:12:06 4 A. The medical assistants.

04:12:06 5 Q. Is that -- part of your job, was it to fill in that
04:12:12 6 section of a progress note?

04:12:12 7 A. Yes.

04:12:12 8 Q. When you say you do the vitals, can you explain to the
04:12:14 9 members of the jury what you mean when you say to do the
04:12:16 10 vitals?

04:12:16 11 A. Blood pressure, respiration, height, weight, and then we
04:12:18 12 would ask a brief patient history.

04:12:20 13 Q. Is that something you did with patients on a regular basis
04:12:26 14 at the clinic?

04:12:26 15 A. Yes.

04:12:26 16 Q. Going back to Government Exhibit 395, do you recognize
04:12:30 17 Dr. Chhibber's handwriting in the additional comments,
04:12:34 18 diagnosis -- the diagnosis section and the test section on
04:12:38 19 every page of that exhibit? Would you just look through it,
04:12:44 20 please, and tell the members of the jury if you recognize that
04:12:46 21 handwriting?

04:12:46 22 A. Which exhibit?

04:12:46 23 Q. I'm sorry, 300. I apologize.

04:12:50 24 A. Yes.

04:12:54 25 Q. Whose handwriting do you see in the diagnosis and testing

04:12:58 1 section for that exhibit?

04:12:58 2 A. Dr. Chhibber's.

04:13:00 3 Q. In your role as a medical assistant working for

04:13:22 4 Dr. Chhibber, did you have interaction with the patients in

04:13:26 5 addition to taking their vitals?

04:13:28 6 A. Yes.

04:13:28 7 Q. In what way?

04:13:28 8 A. I had to get a patient history. I had to also basically

04:13:34 9 get a physical of them with my eyes, look to see, make sure

04:13:40 10 everything was okay.

04:13:40 11 Q. And would you write any of that down in a patient progress

04:13:44 12 note?

04:13:46 13 A. No.

04:13:46 14 Q. Would you tell Dr. Chhibber of anything you saw?

04:13:48 15 A. Yes.

04:13:50 16 Q. Now, when you did the vitals, was that written in the

04:13:52 17 progress note?

04:13:52 18 A. Yes, it is.

04:13:54 19 Q. And would you do that before or after Dr. Chhibber saw a

04:13:56 20 patient?

04:13:56 21 A. Before.

04:13:58 22 Q. Did you have any role in the testing of patients?

04:14:04 23 A. Yes.

04:14:04 24 Q. What kind of testing role did you have, Ms. Rhodes?

04:14:08 25 A. I would --

04:14:14 1 Q. What kind of tests did you administer?

04:14:16 2 A. I administered PFT, ICGs, EKGs, hearing tests --

04:14:24 3 Q. Well --

04:14:24 4 A. -- and the ABI.

04:14:26 5 Q. Let's start with the first one of those you mentioned, the
04:14:44 6 PFT. What is a PFT?

04:14:46 7 A. It's a test basically to give a measurement of the
04:14:50 8 breathing in their lungs. We will ask the patient to take a
04:14:56 9 deep breath in and then blow in a tube, and it will measure
04:15:00 10 the breath.

04:15:00 11 Q. And how would you determine when or when not to administer
04:15:04 12 that test to a patient?

04:15:04 13 A. If it was not told to us, then usually if a patient has
04:15:12 14 asthma, we automatically give that test.

04:15:14 15 Q. Let me ask you that. How did you know automatically to do
04:15:18 16 that?

04:15:18 17 A. Because it was a test for breathing.

04:15:22 18 Q. Well, Ms. Rhodes, did someone instruct you that all
04:15:24 19 patients that had asthma written in their charts should get
04:15:28 20 that test?

04:15:30 21 MR. JONES: Judge, I am objecting to the leading
04:15:32 22 nature.

04:15:32 23 THE COURT: Sustained. Sustained.

04:15:32 24 BY MR. HAMMERMAN:

04:15:34 25 Q. Why did you -- Ms. Rhodes, what was the basis of your

04:15:36 1 understanding of why asthma patients should receive that test?

04:15:40 2 A. I was used to doing it on asthma patients.

04:15:48 3 Q. And did you, in fact, if you saw asthma written in a

04:15:52 4 chart, always perform that test?

04:15:52 5 A. Yes.

04:15:52 6 Q. Was there any other indications that you would see that in

04:15:58 7 your -- let me rephrase.

04:16:00 8 For what other reasons would you perform that test,

04:16:02 9 what other instruction would you receive before you

04:16:08 10 administered that test?

04:16:10 11 MR. JONES: Judge, I'll object. She gave the answer.

04:16:12 12 These are leading questions.

04:16:12 13 THE COURT: Sustained.

04:16:14 14 BY MR. HAMMERMAN:

04:16:14 15 Q. Ms. Rhodes, was that the only instance, asthma, that you

04:16:18 16 would perform the test?

04:16:18 17 A. No.

04:16:18 18 Q. What other reasons would you perform that test?

04:16:24 19 A. Shortness of breath.

04:16:26 20 Q. Well, let's go back to Ms. Tiffany Shirley-Terrell's

04:16:38 21 chart. Do you see that, ma'am?

04:16:38 22 A. Um-hmm.

04:16:38 23 Q. This has been admitted into evidence as Government

04:16:42 24 Exhibit 340.

04:16:46 25 Do you see that?

04:16:46 1 A. Yes.

04:16:46 2 Q. Do you see a notation here that says PFT?

04:16:50 3 A. Yes.

04:16:50 4 Q. If you saw a notation that looked like that in a patient

04:16:52 5 chart, what would you do?

04:16:54 6 A. Give them a PFT.

04:16:56 7 Q. And why would you do that?

04:16:56 8 A. Because it was in the -- this box is usually any test that

04:17:02 9 the medical assistants were to perform.

04:17:04 10 Q. And what was your basis -- why did you understand that to

04:17:10 11 be?

04:17:10 12 A. Because I was told that if it was wrote in the chart here,

04:17:14 13 that it's something we are to perform.

04:17:16 14 Q. And who told you that?

04:17:16 15 A. The other medical assistant, as well as the doctor.

04:17:18 16 Q. And what doctor are you referring to, ma'am?

04:17:20 17 A. Dr. Chhibber.

04:17:20 18 Q. And did you, when you saw that written in a patient chart,

04:17:24 19 perform that test?

04:17:24 20 A. Yes, I did.

04:17:26 21 Q. You've mentioned asthma, and now the PFT being written in

04:17:32 22 the chart. Were there any other reasons that you would

04:17:34 23 perform a PFT test?

04:17:34 24 A. For shortness of breath.

04:17:44 25 Q. What do you mean by that?

04:17:46 1 A. If patient complained of shortness of breath, we would
04:17:50 2 give them the breathing test.

04:17:50 3 Q. And how would you know if a patient complained of
04:17:54 4 shortness of breath?

04:17:54 5 A. If they said it when they came in or the doctor would let
04:17:58 6 us know.

04:17:58 7 Q. Now, this PFT test that you administered, is it a test
04:18:02 8 that you administer often in Dr. Chhibber's office?

04:18:04 9 A. Yes.

04:18:06 10 Q. Did Dr. Chhibber tell you you shouldn't be administering
04:18:10 11 the test to patients that you did?

04:18:10 12 A. Yes.

04:18:12 13 Q. How many occasions did that occur?

04:18:14 14 A. I would say about five.

04:18:20 15 Q. In the two years that you worked there, five times he told
04:18:24 16 you you should not have administered that test?

04:18:26 17 A. Yes.

04:18:26 18 Q. Did he explain why?

04:18:26 19 A. Yes.

04:18:28 20 Q. What did he say?

04:18:28 21 A. That patient --

04:18:34 22 MR. JONES: Objection, foundation, Judge, too.

04:18:36 23 THE COURT: Sustained.

04:18:36 24 BY MR. HAMMERMAN:

04:18:38 25 Q. All right. Let's go -- do you remember the instances of

04:18:40 1 Dr. Chhibber telling you this?

04:18:42 2 A. Yes.

04:18:44 3 Q. All right. Let's take the first one. Do you remember
04:18:46 4 approximately how long you had been working at Dr. Chhibber's
04:18:48 5 office when he told you you should not have administered the
04:18:52 6 PFT test?

04:18:52 7 A. I would say about a year.

04:18:58 8 Q. And where did the conversation take place?

04:19:00 9 A. In the exam room.

04:19:02 10 Q. And who was present?

04:19:04 11 A. Dr. Chhibber, myself, and Tyanna.

04:19:08 12 Q. And what did Dr. Chhibber tell you in this conversation
04:19:12 13 when you were instructed that you should not have performed
04:19:14 14 the test? What did he say?

04:19:18 15 A. That this test shouldn't be performed on this patient
04:19:24 16 because the insurance wasn't going to cover it.

04:19:26 17 Q. The second time that you had one of these conversations
04:19:32 18 with Dr. Chhibber, do you remember approximately how much
04:19:36 19 longer after that first conversation this occurred?

04:19:38 20 A. No, not much longer.

04:19:44 21 Q. Not much longer?

04:19:46 22 A. I believe it wasn't that much longer, some months.

04:19:50 23 Q. Where did that conversation occur?

04:19:52 24 A. In the office.

04:19:52 25 Q. Who was present for that conversation?

04:19:54 1 A. I believe it was me, Tyanna, Dr. B, and Dr. Chhibber.

04:20:02 2 Q. What did Dr. Chhibber tell you during this second
04:20:06 3 conversation where he told you you shouldn't have performed a
04:20:08 4 PFT?

04:20:10 5 A. The patient at that time didn't need a PFT.

04:20:14 6 Q. Did he explain to you --

04:20:16 7 MR. JONES: Judge, I'm going to object. Whatever the
04:20:20 8 conversation is, she should be able to relate it without
04:20:24 9 leading questions.

04:20:24 10 THE COURT: All right. That's enough, ladies and
04:20:32 11 gentlemen, for today. We have had a long day, and the lawyers
04:20:36 12 and I still have some work to do, so don't think we're just
04:20:40 13 taking off early, but we appreciate your attention and your
04:20:44 14 hard work today.

04:20:46 15 Please don't discuss the case with anyone. We will
04:20:48 16 see you -- we will resume at 9:00 o'clock, so please try to be
04:20:52 17 here between 8:30, quarter to 9:00, the clerk will come in,
04:20:56 18 make sure everybody is here because we can't start until
04:21:00 19 everybody is here.

04:21:00 20 Thanks. Have a good evening.

04:21:40 21 (The jury leaves the courtroom.)

04:21:40 22 THE COURT: Please be seated. The witness is excused
04:21:44 23 until tomorrow morning. Start at 9:00 o'clock, so please be
04:21:48 24 back before 9:00.

04:21:52 25 We have some exhibits that were objected to, and I

04:22:00 1 didn't want to have prolonged sidebars, and nothing deadens a
04:22:08 2 jury's interest in a case than a lot of sidebars, especially
04:22:10 3 if they are lengthy.

04:22:14 4 I reserved ruling on Government Exhibit 628, 629, and
04:22:18 5 300. I know there were others, but let's take them one at a
04:22:24 6 time so the defense can explain their objections and I can
04:22:30 7 take a look at any disputed exhibits.

04:22:36 8 MR. HAMMERMAN: Your Honor, may we start with 300?

04:22:38 9 THE COURT: Yes.

04:22:40 10 MR. HAMMERMAN: Your Honor, Government Exhibit --

04:22:40 11 THE COURT: Let me get 300 here.

04:22:48 12 All right. I have it.

04:22:52 13 MR. HAMMERMAN: Government Exhibit 300, your Honor,
04:22:56 14 are the patient progress notes from the patient charts that
04:22:58 15 have already been admitted into evidence. In a sense, this is
04:23:02 16 just a composite of documents that are, in fact, already in
04:23:04 17 evidence that makes it easier for witnesses to move quickly
04:23:10 18 through the individual progress notes without having to go
04:23:14 19 through chart after chart. We simply made this composite so
04:23:18 20 that we could actually be more expeditious in our questions of
04:23:22 21 witnesses. All of these pages, every single page, has already
04:23:26 22 been admitted into evidence.

04:23:28 23 THE COURT: What is the basis of the objection?

04:23:30 24 MR. ORMAN: The basis of the objection, your Honor,
04:23:34 25 is exactly what counsel said. These are all in evidence.

04:23:38 1 What the government has done is they have created a document
04:23:44 2 that unduly focuses the jury's emphasis on certain aspects of
04:23:50 3 the chart but not on others. They have the documents, Judge.

04:23:58 4 THE COURT: Are the documents marked in any way? I
04:24:08 5 mean, is there a difference between the documents in
04:24:10 6 Government Exhibit 300 and the underlying documents? I see
04:24:16 7 certain things circled. That's why I am asking.

04:24:20 8 MR. HAMMERMAN: There are nine, your Honor. They are
04:24:22 9 photocopies of pages out of larger patient charts. What we
04:24:24 10 were trying to do is we understood that we were going to want
04:24:28 11 to question certain witnesses about the progress notes
04:24:30 12 contained in the charts that have already been admitted into
04:24:32 13 evidence. What we didn't want to do was waste your Honor's
04:24:36 14 time and the jurors' time with witnesses fumbling through
04:24:42 15 chart after chart trying to find an individual page out of a
04:24:44 16 hundred or however many pages may be in a chart. We wanted to
04:24:50 17 staple them, in effect, all together so they can be gone
04:24:52 18 through more easily and expeditiously.

04:24:56 19 Every page in Government Exhibit 300 is already in
04:24:58 20 evidence. This is just a way in which every witness that we
04:25:00 21 are going to call will address these pages, and there will be
04:25:04 22 many, can move through them more quickly and easily.

04:25:12 23 MR. ORMAN: What counsel is saying is that these are
04:25:14 24 merely demonstrative. If we treat this as a demonstrative
04:25:18 25 exhibit, there is no objection, Judge.

04:25:22 1 MR. HAMMERMAN: Your Honor, we don't believe it to be
04:25:24 2 demonstrative. We believe it to be evidence. They are
04:25:26 3 photocopies of charts that the defendant drew up and wrote.
04:25:32 4 We'd like this to be in evidence so that it goes back to the
04:25:34 5 jury and so that the jury, also in their deliberations,
04:25:38 6 doesn't have to fumble through all of the charts to find these
04:25:42 7 individual pages.

04:25:42 8 It's simply a means of convenience. The foundation
04:25:46 9 has been laid. The defense didn't object to the underlying
04:25:48 10 charts. We think this will really make the trial and
04:25:52 11 deliberations easier.

04:26:00 12 THE COURT: Yes.

04:26:00 13 MR. ORMAN: Yes.

04:26:00 14 THE COURT: Do you really want us all to fumble
04:26:06 15 through boxes and boxes of documents?

04:26:10 16 MR. ORMAN: I will stipulate that I don't want
04:26:12 17 anybody to fumble through anything, Judge.

04:26:16 18 THE COURT: I respect that. Well, I think there
04:26:32 19 should be some explanation as to what the basis is for
04:26:34 20 selecting -- how many excerpts are there?

04:26:40 21 MR. HAMMERMAN: These are just the progress notes
04:26:42 22 that were found in the charts that have been admitted into
04:26:44 23 evidence.

04:26:44 24 MR. ORMAN: Can I give the court an example of my
04:26:46 25 concern?

04:26:48 1 THE COURT: Yes.

04:26:48 2 MR. ORMAN: If you look at the very first page of
04:26:52 3 Exhibit 300, it's a chart of somebody named Louis Teague.
04:26:58 4 Now, in the real chart, the complete chart, there's also
04:27:04 5 echocardiogram -- I'm sorry, an electrocardiogram. That
04:27:08 6 electrocardiogram is abnormal. To look at just the progress
04:27:12 7 note away from the electrocardiogram could mean that the
04:27:20 8 significance of an abnormal electrocardiogram gets lost.
04:27:24 9 Cutting through what I'm saying is this creates a picture that
04:27:28 10 takes out of context exactly what the problems are for the
04:27:34 11 government.

04:27:38 12 MR. HAMMERMAN: Your Honor, that sounds more like
04:27:40 13 argument than foundational objections to the actual exhibit.
04:27:48 14 That is the underlying base of which have already been
04:27:50 15 admitted by the court.

04:27:52 16 THE COURT: Well, that may be, but this is -- this is
04:27:56 17 not truly -- it's duplicative in a sense, but it also is out
04:28:04 18 of context to just take a page.

04:28:06 19 The objection to 300 is sustained. The underlying
04:28:08 20 documents are in evidence.

04:28:10 21 By the way, I do want to say, I have seen people go
04:28:14 22 in and out of what is the lockup for this courtroom and other
04:28:16 23 courtrooms where secured prisoners are kept and have files,
04:28:26 24 case files that are confidential court files, and it's not an
04:28:32 25 exit to go through the lockup. We don't want to lock the door

04:28:38 1 because the marshals bring prisoners down, and one is
04:28:40 2 scheduled for tomorrow, so we can't lock that door.

04:28:46 3 Next.

04:28:46 4 MR. JONES: Judge, I have to say I'm sorry. I didn't
04:28:48 5 know what the room was. I thought maybe they didn't have a
04:28:52 6 coat room or something.

04:28:52 7 THE COURT: No, this courtroom doesn't have a coat
04:28:56 8 room. We have a lockup back there. In some courtrooms, the
04:29:00 9 lockup is completely separate. Here it's combined. And also
04:29:04 10 our case files, some case files are back there.

04:29:10 11 What's the next one?

04:29:14 12 MR. ORMAN: Your Honor, if I objected to Government
04:29:20 13 Exhibit 627, I did not mean to. I will withdraw that
04:29:24 14 objection.

04:29:24 15 THE COURT: Government Exhibit 627 is admitted.

04:29:28 16 (Above-mentioned exhibit was received in evidence.)

04:29:34 17 MR. HAMMERMAN: Your Honor, the government presented,
04:29:38 18 I believe, six documents that were, for all practical
04:29:44 19 purposes, the same. They were 632 --

04:29:48 20 THE COURT: Just a moment. I have to get the book.
04:30:18 21 Got it.

04:30:18 22 MR. HAMMERMAN: Maybe I should start at the
04:30:20 23 beginning. They were 624, 625, 630, 631, 627, and 632.

04:30:38 24 Now, it's my understanding the defense does not
04:30:40 25 object to 62- -- and I know Mr. Orman will correct me if I'm

04:30:46 1 incorrect here -- 624, 625, and 627. Is that correct, sir?

04:30:50 2 MR. ORMAN: Correct.

04:30:52 3 THE COURT: All right. Just go through the ones that
04:30:54 4 are in dispute so that I can take a look at them in the
04:31:00 5 context of your objection.

04:31:02 6 MR. HAMMERMAN: Yes, your Honor. The reason I bring
04:31:02 7 all six to the court's attention is because we believe the
04:31:06 8 foundation for all six is the same.

04:31:08 9 THE COURT: All right. Tell me the first one that's
04:31:12 10 in dispute.

04:31:12 11 MR. HAMMERMAN: Sure. 630.

04:31:22 12 THE COURT: Patient registration dated April 24th,
04:31:28 13 2009?

04:31:28 14 MR. ORMAN: That's correct, your Honor.

04:31:28 15 THE COURT: What's the objection?

04:31:30 16 MR. ORMAN: Let me point out that the objection to
04:31:36 17 all of these is the same.

04:31:40 18 We will just talk about 630. If we go to the third
04:31:48 19 page of the document and what appears to be every other page
04:31:56 20 thereafter, roughly, what you see are charts for patients.
04:32:02 21 None of these patients are listed in the indictment, Judge.
04:32:08 22 Nobody will testify as to whether any test given to any of
04:32:14 23 these patients is unnecessary. That makes these documents
04:32:22 24 irrelevant, and beyond being irrelevant, they are dangerous,
04:32:26 25 because you're going to have a bunch of documents going to

04:32:28 1 jurors showing tests being given with no explanation, and the
04:32:34 2 jurors may assume that, yeah, all of these tests are improper
04:32:42 3 where nobody will testify that the tests are improper, which
04:32:46 4 is the basis of this litigation. These are meaningless.
04:32:50 5 That's true for every single other exhibit.

04:32:52 6 MR. HAMMERMAN: May I address it, your Honor?

04:32:54 7 THE COURT: Yes.

04:33:00 8 MR. HAMMERMAN: I would like to address two points,
04:33:02 9 if I may. The first is that the reason we introduced these in
04:33:04 10 sets of three to Special Agent Bakken, as the court may
04:33:08 11 recall, is because, as you may see in Government Exhibit 624
04:33:10 12 and 625 and 630, two of those days have written at the top of
04:33:14 13 them, Free clinic. We intend to elicit evidence --

04:33:18 14 THE COURT: Which three --

04:33:26 15 MR. HAMMERMAN: I could hand it up if it makes it
04:33:28 16 easier, your Honor.

04:33:28 17 THE COURT: No. I have a book that's tabbed, but I
04:33:40 18 don't want to talk about theoretical objections. I really
04:33:42 19 would like to see the document and hear the basis.

04:33:44 20 I see under Government Exhibit 624, there is a page,
04:33:50 21 patient registration for -- the first number is 2 and the
04:34:00 22 second number is written over. I am not sure if it's a 5
04:34:02 23 or 6.

04:34:04 24 MR. HAMMERMAN: Correct, your Honor.

04:34:04 25 MR. ORMAN: And there is no objection to that

04:34:06 1 document, your Honor.

04:34:06 2 THE COURT: All right.

04:34:08 3 MR. HAMMERMAN: These -- if you look --

04:34:10 4 THE COURT: Well, 624 is in evidence then?

04:34:14 5 MR. ORMAN: Yes.

04:34:14 6 MR. HAMMERMAN: These documents -- the reason that
04:34:16 7 these were put together, your Honor, as the court will see, in
04:34:18 8 Government Exhibit 624 and 625 are entitled Free Clinic. We
04:34:28 9 intend to offer evidence that Dr. Chhibber offered a free
04:34:32 10 clinic on certain days where patients weren't required to pay.
04:34:36 11 And these progress notes, Special Agent Bakken explained where
04:34:38 12 they came from and how these exhibits were compiled, lists in
04:34:40 13 a sense the diagnoses -- not in a sense. They list the
04:34:44 14 diagnoses and tests found and ordered by Dr. Chhibber for
04:34:48 15 those days.

04:34:48 16 Government Exhibit 630, which was a day or two
04:34:54 17 before, does the exact same thing.

04:34:56 18 We put these composites together, your Honor, because
04:34:58 19 we intend to elicit testimony that on the free days, the
04:35:04 20 patients effectively weren't sick and tests weren't done; but
04:35:08 21 on the paying days, the patients were sick and the testing was
04:35:14 22 done, and that's reflected in the progress notes where
04:35:18 23 diagnoses and tests are written by Dr. Chhibber.

04:35:22 24 Now, Mr. Orman is not objecting to the free clinic
04:35:26 25 days that would show that no tests are done and would like

04:35:28 1 those into evidence, but the foundation for all three records
04:35:32 2 are the same, and it would be -- it's almost -- it would be
04:35:38 3 prejudicial to the government to now admit only the free
04:35:40 4 clinic days without the other day that shows the contrast.
04:35:46 5 These documents were all presented under the same foundation
04:35:50 6 to the court because the contrast is of what is important
04:35:54 7 here.

04:35:54 8 For Mr. Orman to suggest that the day in which
04:36:00 9 Dr. Chhibber found everybody to be ill and had them all
04:36:06 10 subjected to tests is prejudicial, but want to put in the free
04:36:08 11 clinic days where he wasn't paid for those tests and, thus, no
04:36:12 12 one was sick and no one was tested would be unfair to the
04:36:16 13 government, and, frankly, it's a little cynical, your Honor.

04:36:24 14 THE COURT: What's the foundation for your conclusion
04:36:26 15 as to what happened on free days and what happened on days
04:36:30 16 that were insured patients? What's the basis for your
04:36:34 17 conclusion?

04:36:36 18 MR. HAMMERMAN: The progress notes from the charts
04:36:38 19 written by Dr. Chhibber. And, if need be, we can present
04:36:42 20 these exhibits to additional witnesses to verify that the
04:36:46 21 progress notes are written by Dr. Chhibber, but they came from
04:36:50 22 the files that were taken from his office.

04:36:56 23 And the foundation for 624, 625, and 630 was all the
04:37:02 24 same, your Honor. There was no difference in the foundation
04:37:06 25 for these three. Mr. Orman wants the two free clinic days in

04:37:10 1 but not the contrasting paid day that shows something
04:37:14 2 completely different.

04:37:22 3 MR. ORMAN: The way I understand this to work, Judge,
04:37:26 4 is the government gets to offer exhibits, and I have the right
04:37:28 5 to object to whatever I want. That's what I understood the
04:37:30 6 process to be, but, apparently, I was operating under some
04:37:34 7 sort of misapprehension.

04:37:38 8 Indeed, what counsel doesn't understand is the tests
04:37:44 9 given on Sundays, which are free clinic days, are going to be
04:37:48 10 different from tests that were done during the week for this
04:37:52 11 reason. Two of the people who did the critical tests during
04:37:58 12 the week didn't work on Sundays. So that's why there's a
04:38:04 13 difference, not a large difference, but there is a difference.

04:38:12 14 But let's get back to what I am objecting to. I am
04:38:16 15 objecting to getting any chart before the jury showing any
04:38:20 16 test that's being conducted without somebody to step up and
04:38:24 17 say, That test is wrong. No one is going to do that.

04:38:30 18 So now I got a bunch of jurors sitting in the back
04:38:32 19 saying, Yeah, on 5/19/09, Dr. Chhibber did an echocardiogram
04:38:44 20 on Kelly Adams, someone who isn't in the indictment, someone
04:38:48 21 the jurors won't know anything about, someone who isn't going
04:38:52 22 to testify, saying, Gee, that must be an improper test. There
04:38:56 23 will never be a foundation to justify these documents coming
04:39:00 24 into evidence, and counsel knows it.

04:39:04 25 THE COURT: How would you connect these up?

04:39:06 1 MR. HAMMERMAN: Your Honor, we believe that these
04:39:06 2 exhibits, first of all, speak for themselves and are
04:39:10 3 circumstantial evidence. If you look through these
04:39:12 4 exhibits --

04:39:14 5 THE COURT: Now, wait a minute. We don't want jurors
04:39:16 6 interpreting medical records.

04:39:18 7 MR. ORMAN: That's right.

04:39:18 8 THE COURT: Tell me how you're going to connect it up
04:39:22 9 other than asking the jurors to go through and substitute
04:39:26 10 their judgment as to what is medically necessary.

04:39:28 11 MR. HAMMERMAN: We have an expert that Mr. Jones
04:39:32 12 spoke a lot about, the experts that are going to testify in
04:39:34 13 this trial, during his opening. We have an expert that will
04:39:36 14 testify that some of these conditions and these tests are
04:39:40 15 actually, although appropriate in certain circumstances,
04:39:46 16 infrequently found, infrequently used.

04:39:48 17 For example, you've heard testimony today on the
04:39:52 18 carotid bruit, that sound in the throat that is a precursor to
04:39:58 19 someone having a stroke. Our expert will tell the jury that
04:40:00 20 while that occurs, it's actually rare. And if you look
04:40:04 21 through a day's worth of charts and half the people have that
04:40:10 22 sound, that our expert will say that just doesn't happen.

04:40:14 23 One of the exhibits to which Mr. Orman has objected
04:40:18 24 shows that on a given day, every patient that was reflected in
04:40:22 25 the exhibit, and this is going to a different exhibit, but

04:40:26 1 this is 628, one of the ones he objected to, every single
04:40:32 2 person, everyone, was short of breath or had asthma. Our
04:40:34 3 expert will say that that simply doesn't occur. He will
04:40:38 4 explain what it means for a person to be short of breath.

04:40:42 5 THE COURT: Well, if the expert is going to identify
04:40:46 6 what he relied on, I think it would be more appropriate to
04:40:48 7 move these into evidence at that time.

04:40:52 8 MR. HAMMERMAN: He didn't --

04:40:52 9 THE COURT: Not in isolation, but whatever the expert
04:40:56 10 considered.

04:40:56 11 MR. HAMMERMAN: The expert --

04:40:58 12 MR. ORMAN: Judge, we need some clarification. This
04:41:00 13 expert has never seen these documents which are at issue now.
04:41:06 14 How do I know that? I know that because we looked at the
04:41:12 15 submissions to the experts, and we know what documents were
04:41:16 16 given to the expert. None of these documents that we are
04:41:20 17 talking about now were provided to this expert, and I have
04:41:26 18 read every 302 that he has provided. He referenced none of
04:41:32 19 this.

04:41:32 20 So he's not going to say anything about these
04:41:34 21 documents, unless something has happened here that I don't
04:41:38 22 know about.

04:41:38 23 MR. HAMMERMAN: Your Honor, Mr. Orman is correct. We
04:41:40 24 don't intend to have our expert weigh in and judge every piece
04:41:46 25 of evidence the government presents. Instead, our expert has

04:41:48 1 reviewed certain records but will talk about medical care for
04:41:54 2 an internal medicine doctor. And what we intend to do, as
04:41:58 3 both parties do anytime they try to present a case, is you
04:42:02 4 present a mosaic with different pieces of evidence and you
04:42:06 5 allow the jury to interpret that.

04:42:06 6 All we're asking the jury to do is make reasonable
04:42:10 7 inferences from the evidence that's presented. We believe
04:42:12 8 that the testimony that this court will hear will make the
04:42:16 9 jury understand that it is unreasonable for every single
04:42:20 10 person for Dr. Chhibber to have seen on the same day to have
04:42:24 11 the same condition or the vast majority to suffer from the
04:42:28 12 same conditions.

04:42:30 13 This case is about whether or not Dr. Chhibber was
04:42:34 14 diagnosing in patient charts that are reflected in these
04:42:38 15 exhibits the same types of diagnoses that did not actually
04:42:42 16 occur in the patients so that he could order the tests that
04:42:44 17 are reflected in the same exact progress notes. We're asking
04:42:48 18 the jury to review these particular exhibits, put them side by
04:42:54 19 side, and draw whatever reasonable inference they believe
04:42:56 20 appropriate based on all the evidence that they hear, both
04:43:00 21 expert, lay testimony from fact witnesses like Ms. Rhodes, and
04:43:04 22 allow them to make a decision.

04:43:06 23 We will, of course, argue, I know Mr. Jones will do
04:43:10 24 the same, but what we're trying to do is present our case
04:43:12 25 where we say, Look, there is this evidence out there, the

04:43:18 1 experts have told you that this doesn't occur, draw the
04:43:22 2 reasonable inference.

04:43:22 3 And these documents, the foundation has been laid.
04:43:24 4 Mr. Orman wants the jury to see only the ones where
04:43:28 5 Dr. Chhibber didn't provide the tests because it was free.
04:43:32 6 The day after when it wasn't free is totally different, and
04:43:36 7 that is a reasonable --

04:43:36 8 THE COURT: That's something you need foundation for
04:43:40 9 at this point, so you certainly may connect these documents up
04:43:50 10 during the testimony, including the testimony of the expert,
04:43:52 11 if there is a foundation for it.

04:43:56 12 MR. HAMMERMAN: Well, I hear your Honor's ruling --

04:43:58 13 THE COURT: And I think for the record, we should not
04:44:02 14 just have a generalization. I know you referred to several
04:44:06 15 specific documents, but for the record, would you identify
04:44:10 16 which exhibits ruling was deferred on where, in defense's
04:44:22 17 view, there isn't a foundation?

04:44:24 18 MR. HAMMERMAN: The government had presented --

04:44:26 19 THE COURT: Other than handwriting.

04:44:28 20 MR. HAMMERMAN: I'm sorry?

04:44:30 21 THE COURT: Other than handwriting. I think there
04:44:32 22 has been a foundation as to handwriting on these documents.

04:44:34 23 MR. HAMMERMAN: And we will present the -- so the six
04:44:38 24 that we have been discussing with your Honor today, actually,
04:44:42 25 the eight, are 624, 625, 630, 631, 627, 632, 628, and 629.

04:44:54 1 Mr. Orman has agreed to the admission of the free clinic days,
04:45:00 2 624, 625, and 627. The remaining days, the non-free clinic
04:45:06 3 days, we will present them to the staff, like Ms. Rhodes, and
04:45:08 4 have her go through, if necessary, page by page so that she
04:45:12 5 can say that, in fact, those are Dr. Chhibber's handwriting to
04:45:14 6 lay the foundation that those are from the progress notes.

04:45:18 7 And if the court would like -- you know, one of the
04:45:20 8 things we didn't want to do in this trial, as reflected by
04:45:24 9 630, was bring in a pallet of patient records. We have the
04:45:30 10 pallet that underlie every one of these exhibits, and, if
04:45:34 11 necessary, we can bring them all in. We just thought that
04:45:36 12 that would -- it's a voluminous, voluminous amount of
04:45:40 13 documents that we didn't intend to waste the court's or the
04:45:46 14 jury's time with. We believe these composites are excellent
04:45:48 15 summaries, they accurately reflect only statements of the
04:45:52 16 defendant, and that's why we put them together.

04:45:54 17 THE COURT: Are they summaries, really, under the
04:45:56 18 Federal Rules of Evidence, or are they just selected patient
04:46:00 19 records?

04:46:02 20 MR. ORMAN: They are selected documents, your Honor.
04:46:04 21 They are not summaries.

04:46:10 22 THE COURT: The Federal Rules of Evidence are fairly
04:46:12 23 specific as what qualifies as a summary exhibit.

04:46:14 24 MR. HAMMERMAN: They are the -- I think you could
04:46:16 25 characterize them either way, your Honor, because what you're

04:46:18 1 talking about is it would be a pallet of patient charts
04:46:22 2 because for every one of the pages that follows these patient
04:46:30 3 registration forms, there is a progress note, and for every
04:46:32 4 progress note, there is a patient chart like the court has
04:46:36 5 seen. And we would literally be bringing in every patient
04:46:38 6 record and piling those up for the jury to send back into the
04:46:42 7 jury room so that they could see those pages. That's not an
04:46:46 8 efficient use -- I imagine if I tried to do that, the court
04:46:48 9 would be quite displeased with me.

04:46:50 10 THE COURT: You're very perceptive.

04:46:58 11 MR. HAMMERMAN: Right. And so this was a way in
04:47:00 12 which to lay the foundation with an agent who said, I took
04:47:02 13 those pages out because those are the pages that we, the
04:47:04 14 government, want to make our argument around. We copied them,
04:47:08 15 this is the way we copied them, we put them together.

04:47:10 16 I understand Mr. Orman might want to argue
04:47:12 17 differently about a piece of evidence. That is, in fact, what
04:47:16 18 happens over all pieces of evidence in all trials. I expect
04:47:18 19 him to do that. But we believe the foundation has been laid
04:47:20 20 for these.

04:47:20 21 THE COURT: Let me ask, Mr. Orman, is it misleading,
04:47:26 22 do you think, can you identify anything that would be
04:47:28 23 misleading by just -- by the selective use of the records?

04:47:34 24 MR. ORMAN: Sure. We are going to go back to the
04:47:42 25 issue. The issue is not the number of tests that were done.

04:47:48 1 That doesn't matter. You can do 10,000 tests. If all of them
04:47:52 2 are necessary, there's nothing wrong with that.

04:47:56 3 The defect in counsel's reasoning is this. He's
04:48:00 4 telling you there was a lot of tests; therefore, some had to
04:48:08 5 be unnecessary or all had to be unnecessary. Under that kind
04:48:14 6 of reasoning, they could go out and pick up Bill Gates as a
04:48:18 7 criminal because he made a lot of money, so something had to
04:48:20 8 be wrong because nobody should have that much money. That's
04:48:24 9 their argument.

04:48:28 10 They have to go a step further. They have to say
04:48:32 11 that irrespective of the number of tests given, that test
04:48:36 12 shouldn't have been. The only person who can say that -- and
04:48:42 13 this cuts to the heart of this trial -- is an expert. The
04:48:46 14 expert has never seen these documents. The expert doesn't
04:48:50 15 know about them. They go to the jury. And they can say --
04:48:56 16 and the jurors can say, Well, they've put on four patients,
04:49:00 17 but here's a hundred charts of other patients. Those must be
04:49:04 18 bad tests. Otherwise, they wouldn't be in evidence. That
04:49:10 19 would be a tragedy.

04:49:10 20 MR. HAMMERMAN: Your Honor, I presume in all of the
04:49:14 21 trials that you do, you give a certain set of instructions
04:49:18 22 that are the standard instructions in the Seventh Circuit that
04:49:20 23 say that jurors can make reasonable inferences from the
04:49:24 24 evidence presented and that they can use their common sense.

04:49:26 25 Mr. Orman, to use his example, if, in fact,

04:49:30 1 Dr. Chhibber saw 10,000 patients and he ordered 10,000 tests
04:49:34 2 for the same people, it is reasonable for the government to
04:49:40 3 present that evidence and to argue to the jury, yes, some of
04:49:44 4 these were inappropriate.

04:49:48 5 A case should not -- a criminal case where a jury of
04:49:52 6 one's peers are the determinants -- determiners of fact is not
04:49:56 7 only to be determined by experts. This is not a case in which
04:50:00 8 only the experts can tell the jury whether or not a crime has
04:50:04 9 been committed. They are allowed to make reasonable
04:50:06 10 inferences --

04:50:06 11 THE COURT: Well, that's not what an expert does.

04:50:08 12 MR. HAMMERMAN: I know.

04:50:10 13 THE COURT: An expert doesn't tell a jury whether or
04:50:12 14 not --

04:50:12 15 MR. HAMMERMAN: And Mr. Orman suggests that they do,
04:50:16 16 and we don't agree with that. We think the jury should make
04:50:18 17 the determination by seeing the records --

04:50:20 18 THE COURT: A medical determination of necessity?

04:50:22 19 MR. HAMMERMAN: The jury should be allowed to look
04:50:24 20 and say, If 14 patients came to Dr. Chhibber's office on the
04:50:30 21 same day, which Government Exhibit 628 shows, of those 14
04:50:34 22 patients, two had asthma, the other 12 all had shortness of
04:50:40 23 breath, and everybody gets a PFT. It would be as if they all
04:50:46 24 came in after the Chicago Marathon, your Honor. We want to
04:50:48 25 put that in front of the jury and say that didn't happen.

04:50:52 1 What happened is Dr. Chhibber lied, and he lied in
04:50:54 2 the charts so that he could bill for the tests. That's a
04:51:00 3 reasonable inference that a jury should be able to draw.

04:51:02 4 THE COURT: Well, you are talking there is a
04:51:04 5 difference between inference and speculation by a jury on
04:51:08 6 medical matters as to medical necessity.

04:51:10 7 The objection is sustained, but you may connect it
04:51:12 8 up, you may connect it up, subject to reoffering.

04:51:22 9 I am afraid to ask if there is anything else?

04:51:24 10 MR. ORMAN: I am afraid to answer.

04:51:32 11 THE COURT: What's next?

04:51:32 12 MR. HAMMERMAN: Your Honor, there might be one more
04:51:34 13 issue.

04:51:34 14 MR. ORMAN: You see?

04:51:38 15 MR. HAMMERMAN: Mr. Orman, and this is something we
04:51:40 16 have discussed with him, and we are asking, and I think we are
04:51:44 17 in agreement on this, so Mr. Orman, it is our understanding,
04:51:48 18 that there is a witness on the government's witness list who
04:51:50 19 has been there since the beginning of our witness list in this
04:51:54 20 case has entered into a representation arrangement with that
04:52:00 21 prospective witness.

04:52:00 22 THE COURT: Could you tell me who the witness is?

04:52:02 23 MR. HAMMERMAN: The witness is named Jayesh Tolia,
04:52:06 24 and the government at this point still intends to call
04:52:14 25 Mr. Tolia. In the last few months, Mr. Orman has engaged in

04:52:18 1 an attorney-client representation with that witness.

04:52:20 2 Our position is that, at a bare minimum, that
04:52:22 3 presents a potential conflict that needs to be addressed with
04:52:24 4 the defendant. Our understanding is that the defendant can be
04:52:28 5 advised of that conflict by your Honor and can knowingly weigh
04:52:30 6 it, but we believe that the defendant has to weigh that
04:52:34 7 conflict.

04:52:34 8 It's also my understanding that Mr. Orman intends to
04:52:38 9 cross-examine his own client when he testifies. We once again
04:52:42 10 think that Dr. Chhibber has to weigh any potential conflict.
04:52:50 11 We believe that there is a potential there and has to waive it
04:52:52 12 on the record such that he cannot claim later that his counsel
04:52:56 13 pulled punches, if you will, and that he didn't get fair
04:53:00 14 representation because he didn't understand the potential
04:53:04 15 client conflict of having his counsel cross-examine another
04:53:06 16 one of his counsel's clients.

04:53:10 17 THE COURT: What's the witness' name again?

04:53:12 18 MR. HAMMERMAN: Jayesh Tolia.

04:53:16 19 THE COURT: When do you anticipate calling him?

04:53:18 20 MR. HAMMERMAN: Next week, your Honor, and that's
04:53:22 21 only because we are moving much more quickly than we thought.
04:53:24 22 Our days might be off a little.

04:53:26 23 THE COURT: Yes. Is it true that you represent
04:53:28 24 Mr. Tolia?

04:53:30 25 MR. ORMAN: It is.

04:53:32 1 THE COURT: Okay. Explain to me why this isn't a
04:53:38 2 conflict.

04:53:38 3 MR. ORMAN: There is no conflict, Judge. I got a
04:53:42 4 letter last week, an email from counsel, indicating that I was
04:53:46 5 potentially in violation of Rule 7.1 of the Illinois DIs. And
04:53:56 6 I wrote him back and I said, There is an exception, and that
04:54:02 7 is if both clients are given informed consent and do not
04:54:06 8 object. Informed consent, issue disappears.

04:54:10 9 Mr. Tolia sent counsel a letter this morning through
04:54:18 10 email indicating that he doesn't object. I think he got it
04:54:20 11 about 2:30 in the morning. And Dr. Chhibber will tell you he
04:54:24 12 doesn't object to the representation.

04:54:26 13 What we are talking about here is that I filed a debt
04:54:30 14 collection case for Mr. Tolia. Somebody stiffed him out of
04:54:34 15 some money. He asked me to collect it, and I did, and I filed
04:54:38 16 a lawsuit. It never occurred to me that anybody would ever
04:54:42 17 raise an issue like that. To the extent it has merit, it will
04:54:46 18 be waived.

04:54:50 19 THE COURT: Do you have any objection to my asking
04:54:52 20 Dr. Chhibber to put his position on the record as to your
04:54:58 21 representation of a government witness --

04:55:02 22 MR. ORMAN: No.

04:55:02 23 THE COURT: -- specifically, Jayesh Tolia?

04:55:14 24 Dr. Chhibber, are you familiar with this
04:55:16 25 circumstance?

04:55:18 1 THE DEFENDANT: I have no objection.

04:55:22 2 THE COURT: All right.

04:55:24 3 MR. ORMAN: Now are we done?

04:55:26 4 THE COURT: And I assume you have verified this
04:55:28 5 through your witness, Mr. Tolia?

04:55:34 6 MR. COLE: All I have is I received an email from
04:55:38 7 Mr. Orman forwarding an email from Mr. Tolia. So assuming --

04:55:42 8 THE COURT: If there is any question as to Mr. Tolia,
04:55:44 9 then we will take it up outside the jury's presence with
04:55:48 10 Mr. Tolia present and with Dr. Chhibber.

04:55:50 11 MR. COLE: I don't anticipate that being an issue.

04:55:52 12 THE COURT: All right. Well, have a good evening. I
04:55:54 13 assume you're going to be working. Thank you.

04:55:56 14 MR. COLE: Thank you.

04:56:00 15 (The trial was adjourned at 4:55 p.m. on March 1, 2012,
04:56:18 16 until 9:00 a.m. on March 2, 2012.)

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